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Navigating the Tensions Between Sharia and Human Rights in Regional Legislation

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Abstract:

The legacy of past conflicts has prompted the emergence of a civil society movement with the objective of transforming Pontianak City into a Human Rights City. This movement is pursuing this goal by drafting a Regional Regulation concerning Tolerance. Nevertheless, the legislative and political process within the Regional Houses of Representatives has given rise to paradigmatic debates around human rights. This article aims to elucidate the paradigmatic conflict between state actors and civil society during the drafting of the Regional Regulation concerning Tolerance in Pontianak City. The field study presented in this article is based on active participation in public hearings and dialogues between the Regional Houses of Representatives and civil society. The study employs a socio-legal approach, which reveals a contention between two distinct paradigms: the positivist paradigm (naive realism), as represented by state actors, and the critical paradigm (historical realism), as advocated by civil society. The Regional Houses of Representatives, as state actors, oppose the institutionalisation of tolerance because the Eurocentric concept of human rights may conflict with Sharia and local culture. In contrast, civil society views tolerance as a tool for addressing structural inequalities

inherited from past conflicts. The inability of the two parties to reach a consensus led to the failure to ratify the Regional Regulation on Tolerance, which prioritises human rights. This outcome indicates that human rights have not been a primary consideration in the formulation of local regulations concerning tolerance. This attitude contrasts with international and national human rights law, which neglects the aspiration to become a human rights city. This research contributes to changes in the strategy of the civil society movement in advocating for human rights law in regional policy.

Keywords: human rights; legislation; sharia; regional regulation.

Introduction

The concept of human rights cities represents a global movement advocating for the integration of human rights into local governance. Originally introduced by Henri Lefebvre¹, this idea inspired the creation of the People's Decade for Human Rights Education (PDHRE).² Human rights cities were established to enhance the role of local governments in drafting policies aligned with human rights norms and standards within the sustainable development agenda.³ The term "human rights cities" gained prominence through the Human Rights Cities Forum held in 2011 in Gwangju, South Korea. This forum produced the Gwangju Declaration on Human Rights Cities, later endorsed by the World Human Rights Cities Forum. The declaration outlines a human rights city model that emphasises the central role of local governments in ensuring the principles of equality and non-discrimination, social inclusion, tolerance for diversity, and human rights-based governance in the local context.⁴ To establish a human rights city, it is essential to develop both a supra-structure and a political infrastructure through human rights policies and education.⁵ Research conducted by The Raoul Wallenberg Institute argues that Gwangju's rise to global prominence in human rights is largely due to its unwavering commitment, demonstrated by its continued focus on human rights through the implementation of

¹ In his writing, he referred to "the right to the city as a cry and demand". See in Loren King, 'Henri Lefebvre and the Right to the City', in *Routledge Handbook of Philosophy of the City*, ed. Sharon M. Meagher, Samantha Noll, and Joseph S. Biehl (London: Publisher: Routledge, 2018), 76–86.

² Gillian MacNaughton et al., 'The Promises and Challenges of Human Rights Cities', in *Human Rights Education Globally. Globalisation, Comparative Education and Policy Research Volume 22*, ed. Joseph Zajda (Dordrecht: Springer, 2020), 109–32; Jarudin Jarudin et al., 'The Formalization of Islamic Attire for Students: Differentiation of Discrimination and Intolerance Paradigms in the Case of Perkada Sharia in West Sumatra', *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (13 June 2023): 81–92, <https://doi.org/10.31958/juris.v22i1.8606>.

³ Stephen P Marks, Kathleen A. Modrowski, and Walther Lichem, *Human Rights Cities: Civic Engagement for Societal Development* (New York: People's Movement for Human Rights Learning & UN Habitat, 2008).

⁴ World Human Rights Cities Forum, 'Gwangju Declaration on Human Right City', World Human Rights Cities Forum, 2011, https://www.uclg-cisd.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf.

⁵ Kiyoteru Tsutsui and Jackie Smith, 'Human Rights and Social Movements: From the Boomerang Pattern to a Sandwich Effect', in *The Wiley Blackwell Companion to Social Movements* (New York: Wiley Blackwell, 2019), 17.



dedicated policies.⁶ The success of Gwangju offers a model for local governments in Indonesia to adopt city policies that integrate human rights as a central focus.

Several Indonesian cities and districts, including Wonosobo, Bojonegoro, East Lampung, Palu, and Bandung, have successfully integrated local values as the foundation for ethical conduct in implementing human rights cities.⁷ As of 2020, 259 regions have been recognised as human rights cities by the Ministry of Law and Human Rights. This success stemmed from initiatives in human rights education and active cooperation with civil society.⁸ This article examines the formulation of tolerance policy as a political supra-structural design in the context of Pontianak's designation as a Human Rights City. Several factors make Pontianak City a relevant case study. First, Pontianak has a history of prolonged conflict,⁹ with legacies that continue to create unresolved tensions.¹⁰ Second, the city's diverse demographic makes it a microcosm of Indonesia, necessitating careful exploration and management.¹¹ Third, civil society in Pontianak has actively promoted human rights education to address past inter-ethnic conflicts.¹² One notable outcome was the development of an academic paper and the draft Pontianak City Regional Regulation concerning Tolerance.¹³ Fourth, the political-legal process of Regional Regulation concerning Tolerance has faced a paradigmatic struggle regarding the urgency of tolerance and human rights in Pontianak City. Regional Houses of Representatives members have argued that tolerance does not require institutionalisation, viewing human rights as a liberal, Eurocentric concept that conflicts with Sharia and local

⁶ Shin Gyonggu, Ahn Jean, and Chon Jinhee, 'Human Rights City Gwangju: Its Development, Achievement and Limitation' (Gwangju, 2019).

⁷ Lia Nihlah Najwah and Arief Setiawan, 'Locality and Implementation Human Rights City', *Jurnal Ilmu Sosial* 20, no. 2 (2021): 161–84, <https://doi.org/10.14710/jis.20.2.2021.161-184>.

⁸ Zainal Abidin and Aviva Nababan, 'Indikator Kota HAM: Studi Praktik Penyelenggaraan Kota HAM Di Dunia Dan Di Indonesia' (Jakarta, 2021).

⁹ Although dominated by ethnic identity, in various cases it can also extend to religious identity. See in Faraz Sumaya, 'Identitas Dalam Konflik Di Kalimantan Barat (Sebuah Pemetaan Konflik)', *Jurnal Kolaborasi Resolusi Konflik* 2, no. 2 (2020): 91–92, <https://doi.org/10.24198/jkrk.v2i2.28149>.

¹⁰ In other cases, this inheritance always triggers conflict when entering the political year. Identity politics is often used to create what is called "hate spin". See in Ismail Ruslan, 'Pelintiran Kebencian (Hate Spin): Rekayasa Ketersinggungan Dan Ujaran Kebencian Dengan Menggunakan Identitas Agama Dan Etnik Di Kalimantan Barat', *Al-Hikmah Jurnal Dakwah* 14, no. 2 (2020): 189–212, <https://doi.org/10.24260/jhjd.v14i2.1811>.

¹¹ The findings of Zainuddin and Tijani's research indicate that the successful management of multiculturalism plays a crucial role in maintaining political stability and promoting harmonious diversity in Pontianak City. See in Zaenudin Hudi Prasajo and Ach Tijani, 'Embracing Multiculturalism and Fostering Political Stability in Pontianak (West Kalimantan)', *Iseas Perspective* (Singapore, 2024); Subandri Simbolon, Sepniar Lumban Toruan, and Lulu Musyarafah Ningsih, 'Analisis Kebijakan Publik Kota Pontianak Dengan Perspektif Pluralisme Kewargaan' (Pontianak, 2021).

¹² Joshua Fernando et al., 'Raising of Tolerance Consciousness Through Multicultural Education in Post-Conflict Regions of Indonesia', *Education Quarterly Reviews* 6, no. 2 (2023): 245, <https://doi.org/10.31014/aior.1993.06.02.753>.

¹³ The draft has been submitted to the Regional Houses of Representatives and has been discussed together through various forums with the local government, community representatives, representatives of religious leaders, traditional leaders, leaders of community organisations and various youth organisations. The draft has been included in the 2023 Regional Legislation Program. See in Yayasan Suar Asa Khatulistiwa, 'Rancangan Peraturan Daerah Kota Pontianak Tentang Penyelenggaraan Toleransi Dalam Kehidupan Bermasyarakat', Yayasan Suar Asa Khatulistiwa, 2021, <https://suarasakhatulistiwa.or.id/publikasi>.



culture. This opposition jeopardises the mainstreaming of human rights in Pontianak. Nonetheless, Indonesian law mandates the government's responsibility to respect, protect, preserve, and promote human rights under Article 71 of Law No. 39/1999 concerning Human Rights and Presidential Decree No. 53 of 2021 concerning the National Action Plan for Human Rights. Additionally, Regulation of the Minister of Law and Human Rights No. 22 of 2021 outlines criteria for human rights-conscious districts/cities. Despite these regulations, the Pontianak city government has neglected the formal process of establishing a Human Rights City.

Previous studies have explored various perspectives on implementing human rights in regional policies. Afinzha Masar and Syofiaty Lubis examined the "Child Friendly" Langkat District and found that human rights education and community understanding were insufficient.¹⁴ Surya Oktaviandra and Putri Aulia Arza highlighted challenges in implementing gender equality at the local level.¹⁵ Anthin Lathifah's study of the Ahmadiyah Congregation in Wonosobo Regency showed that while not officially recognised, local regulations guarantee religious tolerance for the Ahmadiyah.¹⁶ Irwansyah et al. argued that Sharia-positive regulations could be locally adapted,¹⁷ while Deni Miharja and others contended that Sharia positivisation could be discriminatory, as evidenced by the Sukabumi Regional Regulation concerning Alcoholic Beverages.¹⁸ Nukila Evanty and Nurul Ghuftron noted that the absence of a human rights policy framework in Kalimantan's extractive industries has led to human rights violations against indigenous peoples.¹⁹ Antje Missbach and Yunizar Adiputera discussed the positive local government involvement in refugee accommodation despite the financial impact on local governance.²⁰ Ahmad Syafii and Amir Mu'allim illustrate how regional regulations in Yogyakarta City have formally addressed the rights of homeless people and street beggars.²¹ In the context of the Association of Southeast Asian Nations (ASEAN), the institutionalisation of human rights shows considerable variation. Cambodia, Laos, Myanmar, and

¹⁴ Afinzha Masar and Syofiaty Lubis, 'Implementation Of Regional Regulation No. 3 Of 2022 Regarding Child Friendly District In Langkat District Viewed From The Perspective Of Fiqh Siyarah', *Jurnal Hukum Unissula* 39, no. 1 (2023): 99, <http://dx.doi.org/10.26532/jh.v39i1.30736>.

¹⁵ Surya Oktaviandra and Putri Aulia Arza, 'From International Regulation to Local Implementation Gender Equality for Sustainable Development Goals', *Journal of Southeast Asian Human Rights* 8, no. 1 (2024): 203, <https://doi.org/10.19184/jseahr.v8i1.44031>.

¹⁶ Anthin Lathifah, 'Distributing Rights, Social Justice, and Managing Conflict of Ahmadiyah', *De Jure: Jurnal Hukum Dan Syaria'iah* 14, no. 2 (2022): 331, <https://doi.org/10.18860/j-fsh.v14i2.18289>.

¹⁷ Irwansyah Irwansyah, Faisar Ananda, and Zulham Zulham, 'Positivization of Sharia Regional Regulations in North Sumatra', *Jambura Law Review* 3, no. Special Issues April (2021): 1–17, <https://doi.org/10.33756/jlr.v3i0.10432>.

¹⁸ Deni Miharja, Asep Sandi Ruswanda, and Idrus Ruslan, 'Revisiting Local Regulation of Sukabumi Regency No. 7 of 2015 Concerning the Prohibition of Alcoholic Drinks', *Al-'Adalah* 18, no. 2 (2021): 245, <http://dx.doi.org/10.24042/adalah.v18i2.10133>.

¹⁹ Nukila Evanty and Nurul Ghuftron, 'Multinational Corporations and Human Rights in Indonesia: The Need for Improvement in Legislation', in *Business and Human Rights in Asia*, ed. J. Gomez and R. Ramcharan (Singapore: Palgrave Macmillan, 2021), 53–69, https://doi.org/10.1007/978-981-15-7273-9_4.

²⁰ Antje Missbach and Yunizar Adiputera, 'The Role of Local Governments in Accommodating Refugees in Indonesia: Investigating Best-Case and Worst-Case Scenarios', *Asian Journal of Law and Society* 8, no. 3 (2021): 490–506, <https://doi.org/doi:10.1017/als.2021.5>.

²¹ Ahmad Syafii Rahman and Amir Mu'allim, 'Local Regulation on Homelessness and Beggars in Yogyakarta: Human Rights and Maqasid of Sharia Perspectives', *Millah: Jurnal Studi Agama* 21, no. 1 (2021): 34–39, <https://doi.org/10.20885/millah.vol21.iss1.art2>.



Vietnam tend to oppose this institutionalisation, while Thailand and Indonesia support it. Meanwhile, Malaysia, Brunei, the Philippines, and Singapore occupy a more neutral position.²² Indonesia has been notably progressive in promoting human rights compared to other ASEAN countries in recent years.²³

Prior research has elucidated how the political configuration of local laws can determine the success or failure of regional human rights policies. Many unsuccessful human rights policy implementations can be attributed to the low levels of education and understanding of human rights at the local government level. While there are some limitations, most local governments have taken a commendable first step, although this is often limited to formal compliance. In contrast to the views of numerous previous scholars, this article focuses on the paradigmatic debate between state actors and civil society in the political process that led to the failure to formally implement the drafting of the Regional Regulation concerning Tolerance in Pontianak City. It argues that prioritising human rights in local regulation drafting remains stalled due to the prevailing state actors' paradigm that views human rights as a liberal concept incompatible with Sharia and local culture. Civil society has challenged this paradigm, using tolerance as a tool to address structural inequalities rooted in past conflicts. This research project aims to explore the debate between state actors (the Regional Houses of Representatives) and civil society in formulating the Regional Regulation concerning Tolerance, framed as part of the concept of a Human Rights City within the context of human rights law. This study is expected to contribute significantly to the academic field, particularly in strengthening the human rights perspective at the local government level in Indonesia.

Method

This research employs a qualitative approach based on field research.²⁴ The article utilises a socio-legal research approach to examine the legal policy process in drafting the Regional Regulation concerning Tolerance in Pontianak City. Socio-legal research, introduced by Reza Banakar, is an interdisciplinary method that transcends doctrinal constraints.²⁵ This approach is crucial for developing critical legal studies on how laws function and their societal impact.²⁶ In the context of field research, a socio-legal inquiry may involve the observation of phenomena, the behaviour of respondents, or the actions of institutions as methods of collecting data

²² Yuyun Wahyuningrum, 'A Decade of Institutionalizing Human Rights in ASEAN: Progress and Challenges', *Journal of Human Rights* 20, no. 2 (2021): 160, <https://doi.org/10.1080/14754835.2021.1875811>.

²³ Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith, 'Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia', *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 335, <https://doi.org/10.15294/jils.v7i2.60096>.

²⁴ Ummi Maskanah, Mohd Zakhiri Md Nor, and Aji Mulyana, 'Application of the Principle of Justice in Non-Adjudicative Settlement of Banking Disputes from the Perspective of Islamic Law', *Jurnal Hukum Dan Syariah* 15, no. 1 (9 July 2024): 207–44, <https://doi.org/10.18860/j.v15i1.25411>.

²⁵ Fachrizal Afandi, 'Penelitian Hukum Interdisipliner Reza Banakar: Urgensi Dan Desain Penelitian Sosio-Legal', *Undang: Jurnal Hukum* 5, no. 1 (2022): 241, <https://doi.org/10.22437/ujh.5.1.231-255>.

²⁶ Afif Noor, 'Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research', *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 108, <http://dx.doi.org/10.56444/jidh.v7i2.3154>.



or information.²⁷ The data source consists of primary data collected through direct observation during a public hearing and joint dialogue between the Regional Houses of Representatives and civil society. This event took place on February 10, 2023, at the Regional Houses of Representatives meeting room, with the agenda focused on discussing the Draft Regional Regulation concerning Tolerance. Data collection tools included observation sheets, which the researchers used to record the minutes of the debates during the public hearing. The process of data analysis involves the reduction, presentation, and interpretation of data, which is achieved through the application of legal and social theories.

Result and Discussion

Legal Politics and Meaningful Public Participation

No society can function in an orderly manner without legal and political structure. These two concepts are intertwined, forming a system that serves the interests of the ruler and the community within the state.²⁸ The politics of law should not be interpreted as being limited solely to the domain of the state and its associated forms of power, as John Austin²⁹ suggests in relation to positive law. Rather, it also involves a diverse range of actors, including representatives from both the public and private sectors, in lawmaking.³⁰ The role of government in these collaborative processes is a central aspect of discussions about democracy and democratisation, especially in relation to defining the boundaries between governmental authority and civil liberties.³¹ These ideas differ from the liberal state governed by law in that they challenge the concept of the Rule of Law (or *Rechtsstaat*)³², emphasising the protection of human rights, the separation of powers, government by law, and administrative justice.³³ While the concept continues to evolve, it is crucial to emphasise that collaborative legal politics is not merely bound by legal norms; it must also ensure that the basic rights of citizens are protected equally and inclusively.

The process of democratisation in Indonesia, which began after the end of the authoritarian regime, is still unfolding, though it cannot yet be considered fully advanced. Nevertheless, it is moving in a positive direction.³⁴ Public involvement in

²⁷ Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia* (Malang: UMM Press, 2023).

²⁸ George A. Lipsky, *Law and Politics in the World Community: Essays on Hans Kelsen's Pure Theory and Related Problems in International Law* (Oakland: Univ of California Press, 2023).

²⁹ Rajib Hassan, 'Law Is a Command of the Sovereign Backed by Sanction: Austinian Command Theory of Law - Revisited', *International Journal of Law Management & Humanities* 6, no. 1 (2023): 2110–11, <https://doi.org/10.1000/IJLMH.114303>.

³⁰ Hardi Warsono et al., 'Indonesia Government Sets Back: The Rule Of Law, Collaborative Governance And Human Right Challenges During Covid-19', *Law Reform* 19, no. 2 (2023): 175, <https://doi.org/10.14710/lr.v19i2.53734>.

³¹ Alim Yilmaz and Didem Geylani, 'The Relationship Among the Rule of Law, Morality, and the Modern State', *Insan Ve Toplum* 13, no. 1 (2023): 287, <https://doi.org/10.12658/M0684>.

³² Martin Loughlin, 'The Rule of Law: A Slogan in Search of a Concept', *Hague Journal on the Rule of Law* 16, no. 1 (2024): 511–14, <https://doi.org/10.1007/s40803-024-00224-5>.

³³ Nurul Qamar et al., 'The Enforcement of the Regional House of Representatives in Indonesia: A Normative Review', *Cogent Social Sciences* 9, no. 1 (2023): 5, <https://doi.org/10.1080/23311886.2023.2220235>.

³⁴ Sihombing Ginting, 'Empowering Citizenship: Assessing Political Rights in Indonesia', *The American Journal of Political Science Law and Criminology* 6, no. 4 (2024): 5, <https://doi.org/10.37547/tajpslc/Volume06Issue04-01>.



the legislative process is recognised as a means of strengthening the relationship between the government and society. Participation allows the government to reinforce the principles of clean, transparent, and democratic governance. Conversely, it also allows the community to advocate for the internalisation of citizenship rights.³⁵ For meaningful participation to take place, three conditions must be met: the right to be heard, the right to be considered, and the right to be informed about the development of policies.³⁶ However, in practice, policymaking at the regional level often fails to incorporate meaningful participation from local communities.³⁷

In practice, public participation is often limited to fulfilling the procedural requirements of legislation without meaningful engagement with the substance of the process. As a result, regional policies remain in a state of gestation and effectively dormant. There is no guarantee that the voice of the public will be heard or accommodated by political interests at the regional level. Therefore, it is evident that a responsive principle is necessary in the legislative process to ensure meaningful participation. Imam et al. identified six key requirements for establishing meaningful participation: (1) policy design must respond promptly to public opinion; (2) there should be a reciprocal relationship in collecting data from the public; (3) civil society must be equally involved in policy formulation. Furthermore, it is essential to ensure the inclusion of all interests, including those of affected and minority groups. Additionally, the right to be heard and considered must be guaranteed, and the right to receive responses to public input must be ensured, with clear justifications for either accommodating or rejecting them.³⁸

Tolerance and the Pathway to Meaningful Participation

Research conducted by Yayasan Suar Asa Khatulistiwa reveals significant insights into the diverse history that shapes the heterogeneity of Pontianak City. Historically, Pontianak has been renowned for its rich tapestry of tribes, including Arabs, Malays, Bugis, Chinese, Madurese, Banjar, Javanese, Dayak, and others, each contributing to its development.³⁹ Abu Bakar's research on Pontianak's early history (1771-1778) highlights that the city was initially characterised by settlements forming villages based on tribal identities, such as Kampung Cina, Kampung Bugis, Kampung Melayu, Kampung Tambi, Kampung Arab, Kampung Jawa, and Kampung Banjar. This indicates that ethnic identity in Pontianak has always been

³⁵ Bagus Hermanto, 'Dinamika Partisipasi Publik Dalam Mewujudkan Legislasi Yang Partisipatoris', *Jurnal Yudisial* 16, no. 2 (2023): 213, <https://doi.org/10.29123/jy.v16i2.668>.

³⁶ Martitah Martitah et al., 'Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation', *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 580, <https://doi.org/10.15294/jils.v8i2.69262>.

³⁷ Primi Suharmadhi Putri, 'Local Communities and Transparency in Indonesian Mining Legislation', *Journal of Energy & Natural Resources Law* 41, no. 4 (2022): 431-55, <https://doi.org/10.1080/02646811.2022.2136336>.

³⁸ Imam Asmarudin et al., 'Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia', *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (2024): 219-21, <https://doi.org/10.29303/ius.v12i2.1390>.

³⁹ Simbolon, Toruan, and Ningsih, 'Analisis Kebijakan Publik Kota Pontianak Dengan Perspektif Pluralisme Kewargaan'.



multifaceted, with various tribes contributing to the community's social cohesion from the outset.⁴⁰

This diversity serves as a robust foundation for cultural development, cooperation, and pluralism. However, it also poses challenges, as unaddressed differences can lead to social segregation and undermine national harmony. Historical records demonstrate that Pontianak has experienced ethnic and religious conflicts.⁴¹ Ismail Ruslan notes that conflicts frequently emerge during political events, often exploited by intolerant groups to incite hatred. Such groups are known for creating what Cherian George terms "hate spins,"⁴² manipulating anger or contempt to foster identity politics and social segregation, frequently with political motives.⁴³ In response, civil society has mobilised to form communities and NGOs dedicated to fostering critical education and human rights awareness among the younger generation to address and prevent social segregation in Pontianak. Recognising the dangers of social segregation in such a diverse city, these movements advocate campaigns such as "Pontianak Rumah Bersama" and "Jaringan Pontianak Bhinneka".⁴⁴ These organisations often collaborate to enhance their capacities through forums and programs focused on critical and human rights education. In 2021, there was a consensus that the discourse on tolerance must be fostered through the active participation of all stakeholders in formulating regional policies. The institutionalisation of tolerance in regional legal frameworks is an urgent necessity, given that numerous incidents of violence in Pontianak City often led to ethnic and religious identity conflicts. This raises the question of why this continues to be the case. Civil society has increasingly recognised that the legacy of past conflicts has not been fully addressed, with tensions between ethnic and religious identities remaining a significant underlying concern. In response, civil society groups have proposed a transformative approach: drafting an academic paper and submitting a proposal to the Regional Houses of Representatives to formulate a Regional Regulation concerning Tolerance.

⁴⁰ Pontianak City was founded by Sultan Syarif Abdurrahman al-Qadri in 1771M which at that time was an uninhabited empty land. After the land clearing process that took years (followed by the construction of the Pontianak Sultanate), settlements began to appear from various tribes in the archipelago, so it can be said that the land of Pontianak is not attached to a national or tribal identity. See in Abu Bakar, *Kepingan Sejarah Sosial Dan Politik Tentang Pendiri Negeri Pontianak Dan Perkampungan Arab* (Pontianak: IAIN Pontianak Press, 2021).

⁴¹ A review of the literature reveals that between 1966 and 2007, five instances of ethnic conflict occurred in both Pontianak and the West Kalimantan region. See in Sumaya, 'Identitas Dalam Konflik Di Kalimantan Barat (Sebuah Pemetaan Konflik)'; Moh. Fadhil and Muhammad Rosyad Sudrajad, 'Ahmediyya Congregation in the Shadow of Religious Politics: Tensions Between Law and Freedom of Religion', *Analisa Journal of Social Science and Religion* 8, no. 1 (2023): 21–40, <https://doi.org/10.18784/analisa.v8i1.1829>.

⁴² Ruslan, 'Pelintiran Kebencian (Hate Spin): Rekayasa Ketersinggungan Dan Ujaran Kebencian Dengan Menggunakan Identitas Agama Dan Etnik Di Kalimantan Barat'.

⁴³ Cherian George, *Pelintiran Kebencian: Rekayasa Ketersinggungan Agama Dan Ancamannya Bagi Demokrasi*, ed. Ihsan Ali-Fauzi and Irsyad Rafsadie (Jakarta: Pusat Studi Agama dan Demokrasi (PUSAD) Yayasan Paramadina, 2017).

⁴⁴ A review of research conducted between 2020 and 2022 indicates that fifteen (15) NGOs have been involved in advancing policy advocacy and promoting civil liberties in Pontianak City. See in Jaringan Pontianak Bhinneka, 'Naskah Akademik Peraturan Daerah Kota Pontianak Tentang Penyelenggaraan Toleransi Dalam Kehidupan Bermasyarakat' (Pontianak, 2021).



There are three foundational reasons (*ratio legis*) for the urgent need to institutionalise tolerance into regional regulation.⁴⁵ First, philosophically, the second principle of Pancasila—"Just and Civilized Humanity"—reflects the Indonesian worldview of "Bhinneka Tunggal Ika," which embodies the spirit of tolerance and aims to unify diverse differences into a cohesive whole. Second, sociologically, Pontianak's foundation on plural identities rather than a singular one highlights its cultural and diverse strength. However, empirical evidence shows this diversity can lead to intolerance and unresolved identity conflicts. Third, legally, Article 28I (4) of the 1945 Constitution of the Republic of Indonesia mandates the government's responsibility to protect, promote, enforce, and fulfil human rights, while Article 28J (1) stresses the obligation of citizens to respect others' human rights. The Law concerning Regional Government also outlines the regional governments' duties to ensure peace, public order, and community protection. Decentralisation positions local governments as crucial players in human rights-based urban and regional development. Therefore, formulating a tolerance policy will be pivotal to developing human rights-oriented programs and policies in Pontianak City.

Between Sharia and Human Rights Law: State Actors versus Civil Society

Concrete efforts by civil society led to the proposal of the Regional Regulation concerning Tolerance by the Regional Houses of Representatives. Although the proposal was included in the Regional Legislation Program, it was not a priority. During this process, the author was directly involved in observing a hearing between Yayasan Suar Asa Khatulistiwa, the Pontianak Bhinneka Network, academics, and Lembaga Bantuan Hukum Kalimantan Barat (civil society representatives), and the Regional Houses of Representatives (state actors). This hearing took place on February 10, 2023, in the meeting room of the Regional Houses of Representatives. The hearing revealed a paradigmatic debate between civil society and state actors regarding the urgency of the Regional Regulation on Tolerance in Pontianak City. The author outlines key points from the statements of civil society representatives and state actors. Subsequently, the discussion will analyse the distinctions between the civil society and state actor paradigms using Indarti's legal paradigm analysis.

Lulu Musyarofah, representing the Suar Asa Khatulistiwa Foundation, provided the first perspective from the civil society representative:

"This Regional Regulation on Tolerance was born from the mutual agreement of CSOs, government, FKUB and other stakeholders through the Forum Group Discussion stage; all agreed that a legal product (policy foundation) was needed to regulate the life of tolerance in Pontianak City."

In addition, Ivan Wagner's view as the representative of Lembaga Bantuan Hukum Kalimantan Barat was as follows:

"This Regional Regulation is made to accommodate the capital of diversity that has existed for a long time in Pontianak City so that it becomes a guideline for the government and the community to organise tolerance in Pontianak City. This Regional Regulation also has a chapter on dealing with intolerance, such as providing protection for victims, and if social friction

⁴⁵ Bhinneka.



continues, then this Perda can be the government's guide to solving the problem.”

In addition, an academician, Subandri Simbolon, as a representative of the Jaringan Pontianak Bhinneka, also contributed his views:

"After reading the existing policies in Pontianak City and conducting research, as the government's commitment to pay attention to social issues (tolerance), this Regional Regulation must be accommodated immediately. In any conflict situation, anyone can be a victim, especially women and children. Pontianak already has a lot of social capital for diversity issues in Pontianak City, and it needs to be institutionalised."

In addition, Doni Chairullah, representing the Suar Asa Khatulistiwa Foundation, explained his views as follows:

"In the process of making this perda, we imagined the incidents of intolerance that have occurred in West Kalimantan. We have experienced 17 SARA (ethnicity, religion, race, and intergroup) conflicts, and there has been no systematic effort to prevent this from happening again. This could potentially happen again if we are not sensitive and try to solve this problem. I understand your concerns, but we need to understand today's context. Our Regional Regulation also meets the economic needs of ethnic and diverse communities. We can learn from the Cap Go Meh event some time ago, which implicitly tells us that cultural performances and tolerance can have an impact on the economic income of a region."

Furthermore, Levi's views as a representative of the Equatorial Women Journalists were given as follows:

"DPRD members have not read the whole content and do not understand the diction of diversity and tolerance. I have a story that investors from America really want to invest in a safe and tolerant city. Maybe we can open ourselves to see open views, this is to avoid the images that we have been proud of, such as Pontianak is safe, Pontianak is peaceful and others. We need to understand what shells we need to understand together so that the problem of intolerance can be suppressed."

From the views of the young people above, the legal policies built into the Regional Regulation concerning the Tolerance policy framework are human rights principles and values. Preventing and ending the recurrence of conflict needs to be more concretely initiated in the Regional Regulation concerning Tolerance as an entry point or initial guideline for the establishment of a Pontianak City that cares about human rights.

In this regard, the views of the state actors need to be elaborated, especially their understanding of human rights principles and values. The views of the state actor can be seen in the statements of Regional Houses of Representatives members who attended the hearing. The first view was expressed by Bebbi Nailufa:

"This local regulation should not violate religious norms, not easily violate human rights; I do not agree, for example, if we do not prohibit people from kissing like in the West, I do not want Indonesia to leave our characteristics. Later, it can mushroom LGBT and so on. Malaysia as a Muslim-majority

country can be like that. We do not want to bear the sin because of this Regional Regulation. Don't let us just accommodate the interests of the globalisation of the Human Rights City but forget our locality. It's better not to become a Human Rights City if we leave our culture."

Furthermore, Mujiono also gave his views as follows:

"This tolerance must increase the economy and regional income. We are afraid that this Regional Regulation on Tolerance will be biased, afraid that it will violate religious norms, afraid of LGBT issues, homo issues and freedom of expression. We ask you to clarify the meaning of tolerance in society. Don't just have fun. Many local regulations have been passed, but they are not implemented, so a derivative is needed to solve it. I am more inclined to the diction "culture" to be able to develop cultural centres to improve the regional economy so that finally this Regional Regulation can be supported. This Regional Regulation must be focused. I see that the response from the Pontianak government is very relaxed with the presence of the Regional Regulation. Kesbangpol must be able to agree with this Regional Regulation."

In addition, the views of Ahmad Syafii are given below:

"In general, tolerance is inherent in our society, especially in social life, so this goal needs a clearer context. Pontianak is indeed prone to conflict; we have a long history, and our society is a little sensitive. Don't let us make this Regional Regulation trigger old things to happen again. How it becomes a rule to be the seed of conflict. Things that have been normative in society for a long time are enough. These rules should make us feel more comfortable, not the other way around. Tolerance is accepting our norms and accepting other people's norms. We must think about other people's agreements".

Ali argued:

"There are several components included in human rights friendly cities (migrant workers, women and children, people with disabilities, protection of minority rights), if these four factors are included in the factors, it could be considered. I agree with our colleagues that tolerance seems to be very much alive in Pontianak society. I live in an ethnically and religiously diverse society, and it feels good. Intolerance if there is conflict in the future. Don't let this Regional Regulation become a source of conflict. We are worried because we never get deviant news about LGBT in the past, it never entered the news about LGBT, now it has entered and very much. Don't do things together for tolerance issues. For example, we are too proud of other people, so we hold Christmas events with *shalawatan*. This can be a source of conflict. Religion already lives in society, so we are worried that it could cause friction. The local regulations we have made so far are very human rights friendly in terms of services for the poor, as well as health and children's services".

From the four views of state actors, it appears that there are biased perspectives on what is meant by tolerance, the principles and values of human rights, and the implications of the Human Rights City. There is a concern that Regional Regulation

concerning Tolerance mainstreams human rights as a Western value (Eurocentrism or Eurocentric).⁴⁶ From the views of the older groups, most of them said that the Regional Houses of Representatives sees the mainstreaming of human rights as a globalisation agenda designed by the West to degrade religious norms (or sharia) and reduce the culture of Pontianak City residents.

This perspective is not only flawed and biased, but it also overlooks the fundamental principles of the rule of law, which are centred on the fulfilment of the state's obligations toward human rights. Members of the Regional Houses of Representatives have expressed concern that the civil liberties and equal rights of citizens within the framework of Human Rights Cities may erode local values and Islamic law (or Sharia). It is essential to first define what is meant by the term "Human Rights City" model. In the context of urban social movements, cities are seen as sites of social and political transformation. Urban centres hold significant strategic importance regarding economic, social, and cultural development. Anna Domaradzka characterises the city as an arena of diversity where citizen initiatives emerge, and urban activism takes shape in the form of social engagement, collective action, and democratic fulfilment.⁴⁷ Lefebvre's initial concept of the right to the city was grounded in the struggle of minority groups marginalised by city policies, including labour groups⁴⁸ and those fighting against systemic racism.⁴⁹ Lefebvre's vision is to place city residents in a strategic position without exception. The right to the city should encompass all areas: the city's spatial forms and social processes at all scales, from the village to the world and from the centre to the periphery.⁵⁰ While this may not lead to radical change, strengthening the position of urban citizens provides opportunities for democratisation and inclusive policies.⁵¹

Furthermore, the Indonesian experience provides valuable insights into the evolving dynamics of human rights cities. In Jakarta, the struggle for socio-spatial justice is led by grassroots and marginalised populations advocating for equal access to and living space, counteracting the impacts of capitalist urbanism. This is achieved through confrontation, negotiation, the formation of political contracts, and direct

⁴⁶ The attitudes of policymakers toward human rights are often characterised by a degree of aversion, which can be attributed to the perception that human rights are a product of Eurocentrism. See in Sigit Riyanto and Fajri Matahati Muhammadin, 'The Urgency to Incorporate the Islamic Concept of Rights into the International Human Rights Law Course in Indonesian Law Schools', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 1 (2019): 183–85, <https://doi.org/10.19105/al-lhkam.v14i1.2166>.

⁴⁷ Anna Domaradzka, 'Urban Social Movements and the Right to the City: An Introduction to the Special Issue on Urban Mobilization', *Voluntas* 29, no. 4 (2018): 609, <https://doi.org/10.1007/s11266-018-0030-y>.

⁴⁸ Seng Boon Lim et al., 'The Right or Wrong to the City? Understanding Citizen Participation in the Pre- and Post-COVID-19 Eras in Malaysia', *Journal of Open Innovation: Technology, Market, and Complexity* 7, no. 4 (2021): 5, <https://doi.org/10.3390/joitmc7040238>.

⁴⁹ Jackie Smith, 'Human Rights Cities and the Expanding Global Toolkit for Decolonization and Racial Justice', *Journal of Human Rights* 23, no. 2 (2024): 148–59, <https://doi.org/10.1080/14754835.2024.2324203>.

⁵⁰ Nathaniel Coleman, 'The Right to the City: Centre or Periphery?', in *The Routledge Handbook of Henri Lefebvre, The City and Urban Society*, ed. Michael E. Leary-Owhin and John P. McCarthy (New York: Routledge, 2020), 524–25.

⁵¹ Morgana G Martins Krieger, Marlei Pozzebon, and Lauro Gonzalez, 'When Social Movements Collaborate with the State towards the Right to the City: Unveiling Compromises and Conflicts', *Environment and Planning A: Economy and Space* 53, no. 5 (2021): 1134, <https://doi.org/10.1177/0308518X209816>.



participation in formal political processes.⁵² Meanwhile, Bandung has made more progress by localising universal human rights norms into the Bandung Charter, despite the largely ineffective formal process.⁵³ The successful management of the Human Rights City in Palu can be attributed, at least in part, to the success of the truth-telling process and the provision of reparations to victims of gross human rights violations that occurred between 1965 and 1966.⁵⁴ It is essential to contextualise these disparate dynamics within an appropriate framework. While the development of a Human Rights City has had a formal influence on access to justice—particularly in socio-spatial justice and the empowerment of city residents in decision-making processes—it has not yet realised its full potential.

In the context of human rights law, Indonesia has demonstrated a significant capacity for institutionalising universal human rights norms within its legislation.⁵⁵ Articles 27(1) and 28C (2) of the Indonesian Constitution enshrine citizens' constitutional right to participate in the law and governance. Article 71 of Law No. 39/1999 concerning Human Rights explicitly outlines the state's obligation to respect, protect, uphold, and promote human rights. In the context of decentralisation, the delegation of authority and responsibility for respecting, protecting, upholding, and promoting human rights also falls under the jurisdiction of local governments.⁵⁶ Furthermore, Indonesia has ratified two significant international human rights instruments: the International Covenant on Civil and

⁵² Dian Tri Irawaty, Helga Leitner, and Eric Sheppard, 'Practicing Urban Citizenship: Housing Justice Activism from Jakarta's Margins', *City: Analysis of Urban Change, Theory, Action* 27, no. 5–6 (2023): 985–1006, <https://doi.org/10.1080/13604813.2023.2271716>.

⁵³ Mireille Marcia Karman, Rizky Widian, and Sylvia Yazid, 'No Title Challenges in Norm-Localization at the City Level: The Case of Localizing the Human Rights City Concept in Bandung, Indonesia', *Asian Affairs: An American Review* 50, no. 1 (2020): 1–26, <https://doi.org/10.1080/00927678.2020.1850222>.

⁵⁴ Andrey Sujatmoko, 'Victim's Reparations of the 1965-1966 Gross Human Rights Violations in Palu City', *Mimbar Hukum* 32, no. 1 (2020): 155–56, <https://doi.org/10.22146/jmh.39649>.

⁵⁵ Dedisyah Putra and Nuriza Acela, 'Human Rights Protection in the Islamic Family Law: A Case Study Concerning Domestic Violences', *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (26 September 2023): 1–16, <https://doi.org/10.22373/ujhk.v6i1.18511>; Sayuti Sayuti, Ghina Nabilah Effendi, and Illy Yanti, 'Freedom of Speech Without a Direction: Criticism of the Promotion of Freedom of Speech in Indonesia', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (30 June 2023): 121–44, <https://doi.org/10.30631/alrisalah.v23i1.1389>; Emin Najafli et al., 'Ensuring Human Rights in Ukraine during Introduction of Martial Law: Constitutional and Administrative Aspect', *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (18 April 2024): 52–72, <https://doi.org/10.18592/sjhp.v24i1.12527>; Ibnu Elmi AS Pelu et al., 'Polygamy Law Reform Through the Development of the Aceh Qanun: A New Approach to Protecting the Rights of Women and Children in Indonesia', *El-Mashlahah* 14, no. 1 (30 June 2024): 149–68, <https://doi.org/10.23971/el-mashlahah.v14i1.7864>; Dwi Suryahartati et al., 'The Patent Rights of Pharmaceutical Products and Death: Between Economic Balance and Human Rights', *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (6 September 2024): 330–47, <https://doi.org/10.22219/ljih.v32i2.35226>; Suwito Suwito et al., 'Human Rights Perspectives on Resolving Medical Malpractice Cases through Penal Mediation in Indonesia', *Jambura Law Review* 5, no. 2 (30 August 2023): 278–95, <https://doi.org/10.33756/jlr.v5i2.19169>.

⁵⁶ Yulia Neta, Budiyo Budiyo, and Ade Arif Firmansyah, 'The Model of Local Regulation of the Human Rights Fulfillment Based on Progressive Law', *Jambura Law Review* 3, no. Special Issues April (2021): 22, <https://doi.org/10.33756/jlr.v3i0.7301>; Pavlo Liutikov et al., 'Human Rights And Freedoms Under The Conditions of Martial State: Legal Regulation, Directions of Improvement', *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (29 December 2023): 623–33, <https://doi.org/10.29303/ius.v11i3.501>.



Political Rights (ratified by Law No. 12/2005) and the International Covenant on Economic, Social, and Cultural Rights (ratified by Law No. 11/2005).⁵⁷ These ratifications carry legal consequences for Indonesia under Article 26 of the Vienna Convention,⁵⁸ which obligates the country to incorporate the provisions of international human rights instruments into its national legislation.⁵⁹ More specifically, the concept of Human Rights Cities was formalised through Presidential Decree No. 53/2021 concerning the National Action Plan for Human Rights. The technical provisions related to this decree are outlined in Minister of Law and Human Rights Regulation No. 22/2021, which sets the criteria for districts and cities demonstrating a commitment to human rights. Considering the legal framework, the development of Human Rights Cities serves as a mechanism for fulfilling the obligations of the state and local governments according to the principles of decentralisation.

What of the claim that human rights conflict with local values and Islamic law (or Sharia)? It is evident that concerns exist regarding the institutionalisation of tolerance potentially leading to the promotion of human rights, which some view as conflicting with Sharia law and local culture. This debate often falls into a monological and absolutist framework.⁶⁰ According to Nor Salam and colleagues, the tension between Sharia and human rights stems from differing foundational arguments: Sharia is rooted in theocentrism, while human rights are grounded in anthropocentrism.⁶¹ Similarly, Syariful Alam et al. assert that Islamic groups controlling the government often contravene human rights and Sharia principles rather than clarify the relationship between the two.⁶² Consequently, state actors may regard human rights as a Western concept incompatible with the religious and local values of Pontianak City, reflecting a form of naive realism prevalent among many Indonesians. Human rights principles, derived from universal human values, are not inherently at odds with Sharia. The developments in Indonesia have significant

⁵⁷ Eko Riyadi, 'Institutionalization of Human Rights Standards in Indonesia', in *International Human Rights and Local Courts: Human Rights Interpretation in Indonesia*, ed. Aksel Tømte and Eko Riyadi (London and New York: Routledge Taylor and Francis Group, 2024), 78.

⁵⁸ Naser Pajaziti and Nuredin Lutfiu, 'The Impact of the Legal Principle Pacta Sunt Servanda on the Implementation of the Agreement of Principles Governing the Normalization of Relations', *International Journal of Religion* 5, no. 3 (2024): 459, <https://doi.org/10.61707/4xhsxs11>.

⁵⁹ Laode Husen et al., 'Implementation of Legal Guarantees for Human Rights Protection in Indonesia', *Journal of Law and Sustainable Development* 11, no. 4 (2023): 11, <https://doi.org/10.55908/sdgs.v11i4.624>.

⁶⁰ Ajla Čustović, 'Progressive Islamic Interpretation of Tradition Why Should Muslims Treat Sharia Law Only as a Moral Code in the Context of Universal Human Rights?', in *When Politics Meets Religion: Navigating Old Challenges and New Perspectives*, ed. Marko Veković and Miroljub Jevtić, 1th Editio (London: Routledge Taylor and Francis Group, 2024), 1–14, <https://doi.org/10.4324/9781003422976>.

⁶¹ Nor Salam et al., 'Interfaith Marriage from the Perspective of Rationality: Theocentrism in Islamic Law and Anthropocentrism in Human Rights Law', *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 186, <http://dx.doi.org/10.18860/j-fsh.v16i1.23989>; Ulul Umami and Abdul Ghofur, 'Human Rights in Maqāṣid Al-Sharī'ah al-Āmmah: A Perspective of Ibn 'Āshūr', *Al-Ahkam* 32, no. 1 (28 April 2022): 87–108, <https://doi.org/10.21580/ahkam.2022.32.1.9306>.

⁶² Syariful Alam, Sholahuddin Al-Fatih, and Merve Ozkan Borsa, 'Islamism and The Challenge of Democratization in Indonesia', *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 208, <http://dx.doi.org/10.18860/j-fsh.v15i2.23398>.



ramifications for the wider ASEAN region, where the concept of 'Asian Values'⁶³ reinforces cultural relativism. Cekli Setya sees a potential opportunity to foster constructive dialogue on cultural relativism, including Islamic values (such as Sharia), on equal footing. Both Asian Values and Islamic Values share a common thread that, if articulated effectively, can accommodate the universalism of human rights, albeit in different contexts.⁶⁴ This debate, when examined in the context of international human rights law, centres on whether international human rights norms can be directly incorporated into the national laws of each country. It has led to two distinct schools of thought: the monism school and the dualism school. The monism school argues that international human rights norms can be directly applied based on the principle of *pacta sunt servanda*,⁶⁵ while the dualism school contends that human rights must be adapted to fit the national legal context.⁶⁶

Considering the ongoing debate surrounding the relationship between human rights and Sharia, it is crucial to identify avenues for constructive engagement and the realisation of shared objectives. Mohammad Salman Alkhaza'leh demonstrates that human rights are deeply embedded in Islamic thought, which upholds humanity. The Islamic Declaration of Human Rights, established in 1990, reflects this convergence.⁶⁷ Farkhani et al. highlight the harmonisation of Sharia and human rights in the Qanun Jinayat of Langsa, which respects minority rights.⁶⁸ Abdul Halim notes that this harmonisation involves negotiating between minority groups and Acehese socio-cultural conditions.⁶⁹ Although not direct, the Acehese experience illustrates that Sharia and human rights can be harmonised. The crucial connection

⁶³ The term "Asian Values" refers to a cultural relativist view held by many Southeast Asian countries, suggesting that human rights universalism cannot be accepted if it contradicts Asian culture. Alternatively, it can be understood as a framework for interpreting and implementing human rights in a way that is specific to Asian cultures. See in Heru Susetyo, 'Human Rights Regime: Between Universality and Cultural Relativism, An Indonesian Experience', *Indonesian Journal of International Law* 16, no. 2 (2019): 198–200, <https://doi.org/10.17304/ijil.vol16.2.749>.

⁶⁴ Cekli Setya Pratiwi, 'Bridging the Gap Between Cultural Relativism and Universality of Human Rights: Indonesia Attitudes', *Journal of Indonesian Legal Studies* 5, no. 2 (2020): 460–61, <https://doi.org/10.15294/jils.v5i2.39271>.

⁶⁵ I Dewa Gede Palguna and Agung Wardana, 'Pragmatic Monism: The Practice of the Indonesian Constitutional Court in Engaging with International Law', *Asian Journal of International Law* 14, no. 2 (2024): 408, <https://doi.org/10.1017/S2044251323000723>.

⁶⁶ Dana Burchardt, 'Looking Behind the Façade of Monism, Dualism and Pluralism', KFG Working Paper Series (Berlin, 2023).

⁶⁷ Mohammad Salman AlKhaza'leh, 'An Outlook of Each of the Islamic Thought and the Contemporary Global Thought on the Human Concept and Rights', *Academic Journal of Interdisciplinary Studies* 10, no. 2 (2021): 163, <https://doi.org/10.36941/ajis-2021-0047>.

⁶⁸ Farkhani Farkhani et al., 'Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province', *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 215, <https://doi.org/10.24090/mnh.v17i2.7897>; Sakhowi Sakhowi, 'Taqnīn Method of Qānūn Jināyah and Problems of Its Implementation in Aceh, Indonesia', *Journal of Islamic Law* 3, no. 2 (31 August 2022): 193–211, <https://doi.org/10.24260/jil.v3i2.817>.

⁶⁹ Abdul Halim, 'Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh', *Human Rights Review* 23, no. June (2022): 265–88, <https://doi.org/10.1007/s12142-021-00645-x>; Safira Mustaqilla et al., 'The Existence of Non-Muslim Minorities in Aceh Indonesia: A Study of Civil and Police Institutions', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (28 April 2024): 628–45, <https://doi.org/10.22373/sjhk.v8i1.17386>; Mursyid Djawas et al., 'The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia', *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (19 June 2023), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/32127>.



between Sharia and human rights is humanity, as illustrated by the concept of *maqashid* Sharia.⁷⁰ Bielefeldt and Wiener further support this view by asserting that:

*“Human rights as fundamental rights do not belong to anyone, not to Europeans as alleged as Eurocentric, human rights belong to mankind for the simple reason that they are human and therefore equal for all people”.*⁷¹

Bielefeldt and Wiener’s insights bolster civil society’s arguments for implementing human rights. For civil society, tolerance and the concept of a Human Rights City represent a movement to challenge the entrenched positivist paradigm of state actors, especially those who perceive Sharia and human rights as inherently opposed. Institutionalising tolerance is not merely about formalising tolerance but also about critically addressing the entrenched belief systems of state actors.

Beyond Paradigm Battles: Positivism versus Critical Theory

State actors argue that tolerance should be an inherent part of religious and social norms rather than something that needs institutionalisation. This perspective highlights a fundamental distinction between the critical civil society view, which emphasises the need for regional policies, and the state actors’ reliance on normative policy frameworks. To clarify this legal-political situation, Indarti’s legal paradigm model offers valuable insights. A paradigm is a set of beliefs or a shared framework for understanding and interpreting the world, including the representation of a worldview.⁷² It shapes how individuals perceive objects and phenomena in different ways. As a belief system, paradigms influence thoughts, attitudes, and actions, which, in turn, shape decision-making processes.⁷³ Indarti identifies four paradigms relevant to the study of law and politics based on the model initiated by Guba and Lincoln: positivism, post-positivism, critical theory, and constructivism.⁷⁴ An overview of these paradigms is provided in the Table below.

Table 1. Guba and Lincoln Paradigm

No.	Paradigm	Explanation
1.	Positivism	Positivism refers to naive realism, which views everything as a law that has worked as it should.
2.	Post-positivism	This paradigm has developed from positivism because it begins to critically question the naive realism that has been believed but is still within the legal creeds it believes in.

⁷⁰ Muwaffiq Jufri, ‘Nuansa Maqashid Al-Syariah Dalam Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia’, *Istinbath: Jurnal Hukum* 14, no. 1 (2017): 1–14, <https://doi.org/10.32332/istinbath.v14i1.735>.

⁷¹ Heiner Bielefeldt and Michael Wiener, *Menelisik Kebebasan Beragama: Prinsip-Prinsip Dan Kontroversinya*, ed. Ahmad Baiquni (Bandung: Penerbit Mizan, 2021).

⁷² Erlyn Indarti, ‘Bridging the Gaps: A Paradigmatic Insight into Philosophy of Law’, *Diponegoro Law Review* 1, no. 1 (2016): 7, <https://doi.org/10.21456/vol%viss%ipp1-11>.

⁷³ Aditya Y. Sulistyawan, Erlyn Indarti, and Raden B. Sularto, ‘Legal Enforcement Approach by the Indonesia’s Minister of Maritime Affairs and Fisheries (Period 2014-2019) in Combating Illegal Fishing in Indonesia: A Legal Philosophy Study’, *AAFL Bioflux* 16, no. 2 (2020): 3301.

⁷⁴ Erlyn Indarti, ‘Diskresi Dan Paradigma Sebuah Telaah Filsafat Hukum’ (Universitas Diponegoro, 2010).

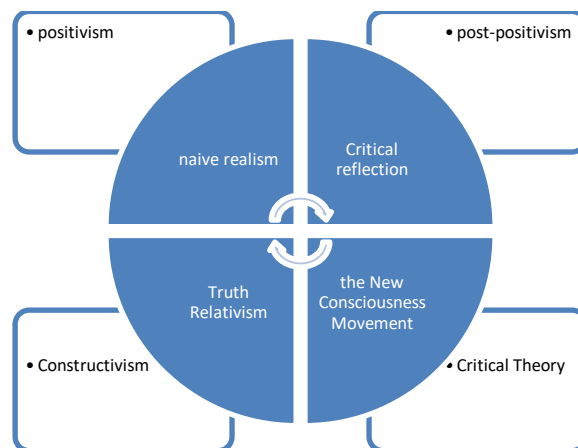


<p>3. Critical Theory</p>	<p>Critical theory refers to historical realism in the form of social, political, economic, and cultural dialectical processes, as well as circumstances such as structural inequality, class conflict, gender discrimination, and other circumstances that spark a struggle to get out of the shackles of inequality.</p>
<p>4. Constructivism</p>	<p>This paradigm considers truth in terms of relativism. Therefore, every truth requires a process of reinterpretation and reactualisation of new interpretative processes in accordance with the context of social reality.</p>

Source: Erlyn Indarti, 2010.

The outline can be seen in the chart below:

Chart 1. Guba and Lincoln Paradigm



In the context of the legal politics surrounding the Regional Regulation concerning Tolerance, the debate between civil society and state actors revolves around the concepts of tolerance and Human Rights Cities. State actors view tolerance as a natural social interaction that does not require formal institutionalisation. Although they acknowledge that Pontianak City still bears unresolved remnants of conflict, they believe institutionalising tolerance is misguided. This viewpoint suggests that state actors perceive tolerance as an idealistic notion, favouring its organic emergence within social realities.

Initially, the paradigm of post-positivism guided educational efforts on tolerance and human rights as forms of critical reflection. Influenced by Islamic thinker Abdullahi Ahmed An-Na'im, civil society began engaging with conflict victims to map and address identity inequalities.⁷⁵ Gradually, the movement evolved toward critical theory, focusing on alleviating identity inequalities through cultural movements, tolerance education, human rights education, cultural festivals, civic pluralism, religious freedom, interfaith dialogue, and multicultural engagement. This approach aims to resolve identity imbalances and prevent future conflicts, as detailed in the Table below.⁷⁶

Table 2. Tolerance and Human Rights City in Paradigmatic Relationship

No.	Paradigm	Explanation
1.	Positivism	This serves as a belief system held by the old guard and most of the city's citizens about how tolerance and human rights should work. The effect of this paradigm is that identity inequality is maintained.
2.	Post-positivism	There is a growing movement of critical reflection on the essence of tolerance and human rights and how they should be elaborated in Sharia and civic pluralism.
3.	Critical Theory	Building a new awareness movement to escape from the conditions of structural inequality through public participation in governance and policy-making, especially focusing on the institutionalisation of tolerance. In the context of Sharia, reinterpretations are made to negotiate Sharia and human rights.
4.	Constructivism	The end result is yet to be predicted, but this paradigm will emerge when all parties build synergy in improving governance, formulating policies based on mainstreaming human rights and tolerance.

Source: Processed by the author

Ultimately, civil society recognised that small-scale efforts alone would not suffice. Effective institutionalisation is necessary to expand the movement as part of a city's civic pluralism. Through this process, civil society seeks to actively contribute to Pontianak City's policy formulation, fostering collaboration between local government, citizens, communities, and NGOs to ensure that all residents understand and respect each other's rights. As a result, the paradigm begins to shift toward constructivism, where tolerance and human rights are reinterpreted together. Constructivism, as proposed by Guba and Lincoln, relies on hermeneutics and

⁷⁵ Abdullahi Ahmed A Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990).

⁷⁶ Egon G. Guba, *The Paradigm Dialog* (California: Sage Publications, Inc., 1990).



dialectics to build a transformative shared understanding.⁷⁷ This shift will facilitate a collaborative effort to develop Pontianak City into a Human Rights City, emphasising the compatibility of Sharia and human rights. The author argues that the stance of state actors counteracts humanitarian values, which are central to the principles of Islamic law. Both Sharia and human rights are compatible and should drive the development of regional policies and foster meaningful participation in Pontianak City's evolution into a Human Rights City.

Conclusion

The debate over the Draft Regional Regulation concerning Tolerance represents a paradigmatic clash between state actors and civil society, with significant implications for the future of the Human Rights City discourse in Pontianak. In this paradigmatic analysis, state actors remain entrenched in a positivist framework based on naïve realism. They continue to question the urgency of designating the city as a Human Rights City for its citizens. According to the Regional Houses of Representatives, the institutionalisation of tolerance and the Human Rights City concept will be contested by local values and Islamic law, which are framed as 'Asian values' or 'Islamic values.' Consequently, they reject the idea of labelling the city as a Human Rights City, arguing that the universalism of human rights could undermine the existing social order. Meanwhile, civil society has begun to critically examine the meaning of tolerance within the context of 'Asian Values' or 'Islamic Values'—frameworks that, they argue, perpetuate impunity and leave the legacy of past conflicts unresolved. Civil society believes that Pontianak is at a critical juncture and must immediately adopt a human rights mainstreaming policy as part of a formal process backed by political will to prevent the recurrence of conflict and promote equality for all groups, including minority groups vulnerable to conflict. Within this framework, the prevailing paradigms are post-positivism and critical theory. This battle of paradigms is not intended to pit the two groups against one another but rather to illustrate how belief systems shape the conditions for public policy. The outcome of the debate was the rejection of the draft Regional Regulation concerning Tolerance and the dismissal of the Human Rights City concept. The rejection reveals that the Regional Houses of Representatives lack a proper understanding of the concept of human rights and contradict both international and national human rights law, which, through the principle of decentralisation, assigns responsibility for respecting, protecting, defending, and promoting human rights at the regional level. This situation underscores the critical challenge of institutionalising human rights as a meaningful legal framework, one that is difficult for local governments to enforce due to misguided and tendentious assumptions.

Although the outcome was disappointing, the author acknowledges that the debate process itself was valuable as a form of meaningful participation. The draft Regional Regulation concerning Tolerance emerged from the collective efforts of civil society, which brought it to the Regional Houses of Representatives for drafting and discussion. The right to be heard, the right to be considered, and the right to receive an explanation for the acceptance or rejection of civil society's input were the minimum requirements that the Regional Houses of Representatives took into

⁷⁷ Yvonna S. Lincoln and Egon G. Guba, *The Constructivist Credo* (Walnut Creek, California: Left Coast Press Inc., 2013).



account. This good practice fosters optimism that the formal process of formulating the Tolerance and Human Rights Cities framework will continue moving in a positive direction, ultimately aligning with the constructivist paradigm—provided that dialogue and the reinterpretation of Sharia and human rights continue to evolve. The concepts of tolerance and Human Rights Cities will remain dynamic, continuously reinterpreted through dialogue and viewed as a 'work in progress' in a transformative way.

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