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The Constitutionalization of Sharia in Muslim Countries: Historical and Political Struggles in Indonesia, Türkiye, and Saudi Arabia

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Abstract
This study examines the complex relationship between sharia and constitutionalism in three Muslim-majority countries: Indonesia, Türkiye, and Saudi Arabia. Despite their majority Muslim population, these countries have adopted divergent approaches in integrating—or delimiting—the role of sharia within their constitutional frameworks. Drawing on interviews with legal and political scholars from each country, the research employs a comparative political-constitutional approach to analyze the dynamics of sharia constitutionalism across these distinct contexts. The findings reveal varying degrees of constitutional accommodation of sharia. Indonesia exemplifies a model of religious constitutionalism, where Islamic principles are acknowledged but not formally codified within the constitutional text. Türkiye represents a paradigm of secular constitutionalism that distinctly separates religion and state, excluding sharia from the constitutional and legal order. In contrast, Saudi Arabia exhibits a puritan constitutionalism, whereby the Quran and Hadith constitute the primary sources of constitutional authority. These contrasting models illuminate broader ideological and institutional orientations: Saudi Arabia grounds its constitutional identity in religion, Indonesia integrates certain religious principles within a pluralistic framework, and Türkiye maintains a secularist stance that confines religion to the private sphere.

Keywords: Constitutionalism, Sharia, Politics, Muslim Countries

I. Introduction

Democracy has emerged as the predominant political system embraced by most states worldwide, though its application demonstrates considerable variation.[1] Indonesia, Türkiye, and Saudi Arabia, as Muslim-majority countries, each respond distinctively to the evolution of democratic governance.[2] Both Indonesia and Türkiye represent states

[1] Kubicek, P. (2015). *Political Islam & democracy in the Muslim world*. Boulder, CO: Lynne Rienner Publishers. Nasr, S. V. R. (2005). The Rise of" Muslim Democracy". *Journal of democracy*, *16*(2), pp. 13-27.
[2] Schneier, Edward. *Muslim Democracy: Politics, religion and society in Indonesia, Turkey and the Islamic world*. Routledge, 2015. Lewis, Bernard. "Why Turkey is the only Muslim democracy." *Middle East Quarterly* 1.1

that have successfully undergone political transitions toward democracy. In Indonesia, the entrenched authoritarian regime was dismantled through a process of democratic transition, after which the state continues to consolidate its democratic institutions.[3] Türkiye likewise experienced a political transformation toward democracy after the dissolution of the Caliphate, and it has since continued to practice democracy within the framework of a secular ideology.[4] On the contrary, Saudi Arabia remains firmly committed to its monarchical political system, which does not embrace democratic governance.[5] These divergent political systems illustrate the diverse historical trajectories and political interests that shape each of the three states.

In line with the development of modern politics, constitutionalism has emerged as a significant imperative within the political dynamics of Muslim-majority states.[6] Accordingly, constitutionalism has emerged as a substantial imperative within the political dynamics of Muslim-majority states. Constitutionalism affirms the primacy of a constitutional political order that regulates the system of government as well as the rights and obligations of citizens. These states have drafted constitutions and, in some cases, amended them in accordance with political transformations. Türkiye and Indonesia, as republics operating under democratic systems, have successfully undertaken constitutional reforms. Meanwhile, Saudi Arabia, as a monarchy, does not possess a constitution in the modern sense, as the legal and political order of the state is grounded in the Quran. The Arab Spring, which shook political regimes across the Arab world, did not dislodge the political system of Saudi Arabia toward a democracy grounded in constitutionalism.[7]

Since its independence, Indonesia has enacted four constitutional frameworks: the 1945 Constitution, the 1949 Provisional Constitution, the 1950 Provisional Constitution, the reinstated 1945 Constitution, and the 1999–2002 Constitution (the amended

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(1994): 41-49. Lombardi, C. B. (2013). Designing Islamic constitutions: Past trends and options for a democratic future. *International journal of constitutional law*, *11*(3), pp. 615-645.

[3] Liddle, R. W., & Mujani, S. (2013). Indonesian democracy: From transition to consolidation. In *Democracy and Islam in Indonesia* (pp. 24-50). Columbia University Press. Aspinall, E. (2013). Popular agency and interests in Indonesia's democratic transition and consolidation. *Indonesia*, (96), 101-121. Mietzner, M. (2009). *Military politics, Islam, and the state in Indonesia: from turbulent transition to democratic consolidation*. Institute of Southeast Asian Studies.

[4] Erisen, C., & Kubicek, P. (Eds.). (2016). *Democratic consolidation in Turkey: Micro and macro challenges*. Routledge. Sooyler, M. (2015). *The Turkish deep state: State consolidation, civil-military relations and democracy*. Routledge.

[5] Tausch, Arno. "Saudi Arabia—Religion, gender, and the desire for democracy." *The Future of the Gulf Region: Value Change and Global Cycles*. Cham: Springer International Publishing, 2021. 331-369. Seznec, Jean-Francois. "Democratization in the Arab World? Stirrings in Saudi Arabia." *Journal of Democracy* 13.4 (2002): pp. 33-40.

[6] Grote, Rainer, and Tilmann J. Röder, eds. *Constitutionalism in Islamic countries: Between upheaval and continuity*. Oxford University Press, 2012. Lerner, Hanna. "Permissive constitutions, democracy, and religious freedom in India, Indonesia, Israel, and Turkey." *World Politics* 65.4 (2013): pp. 609-655.

[7] Kubicek, P. (2015). *Political Islam & democracy in the Muslim world*. Boulder, CO: Lynne Rienner Publishers, p. 275.

Constitution of the Republic of Indonesia of 1945). Thus, the principal characteristic of Indonesia's constitution is a form of religious democracy.[8] Meanwhile, Türkiye has adopted the 1921 Constitution, the 1924 Constitution, the 1961 Constitution, and the 1982 Constitution. The 1982 Constitution has been amended 19 times to date, with the first amendment occurring in 1987 and the most recent in 2017. The hallmark of Türkiye's constitutional democracy is secular democracy.[9] Conversely, as a monarchy, Saudi Arabia does not adhere to constitutionalism.[10] Its official political orientation is shaped by a conservative Islamic system based on the Quran, with the Quran and Hadith serving as the kingdom's constitution. Nevertheless, Saudi Arabia promulgated the *al-Niẓām al-Asāsī li-l-Ḥukm* (Basic Law of Governance) in 1992. Although the *al-Niẓām al-Asāsī li-l-Ḥukm* is not a formal constitution, it fulfills several functions as a constitutional document.

The incorporation of sharia in Muslim countries has also been debated during the constitution-making processes. Muslim countries such as Indonesia, Türkiye, Iran, Iraq, Sudan, Libya, Tunisia, Egypt, Pakistan, and Afghanistan have debated persistently regarding the accommodation of sharia within the constitution. Islamic parties in these countries have consistently sought to incorporate sharia law into their constitutions.[11] Indeed, some Muslim states, such as Saudi Arabia, Iran, and Pakistan, have formally enshrined sharia within their constitutions. By contrast, Türkiye and Indonesia have declared themselves as states that do not integrate sharia into their constitutional frameworks.[12]

The debates over incorporating sharia into the constitutions of Türkiye, Indonesia, and Saudi Arabia are closely tied to their respective histories, cultures, and political systems. Studies on sharia in the context of constitutional reform in Muslim-majority

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[8] Lerner, Hanna. "Permissive constitutions, democracy, and religious freedom in India, Indonesia, Israel, and Turkey." *World Politics* 65.4 (2013): pp. 609-655.

[9] Tögel, Akif. "Constitutional Change in Turkey: Is a New Amendment Necessary." *Legal Hukuk Dergisi* 224 (2021): pp. 3567-3596.

[10] Arlis, Arlis, and Neni Yuherlis. "The Intensity of The Constitution According to Dustur Saudi Arabia." *As-Siyasi* 2.2 (2022): pp. 219-246.

[11] Ahmed, Dawood I. & Moamen Gouda, 2014. *Measuring Constitutional Islamization: The Islamic Constitutions Index*, Hastings Int'l & Comp. L. Rev. Vol. 38: Indrayana, Denny, *Indonesian Constitutional Reform 1999-2002: An Evaluation Of Constitution-Making In Transition*, Jakarta: Kompas Book Publishing, 2008, p. 288. El-Sayed, Ahmed, 2014. "*Post-Revolution Constitutionalism: The Impact of Drafting Processes on the Constitutional Documents in Tunisia and Egypt*", Electronic Journal of Islamic and Middle Eastern Law, Vol. 2. University of Zurich, Switzerland, pp. 44-45. Marks, Monica L., *Convince, Coerce, or Compromise? Ennahda's Approach To Tunisia's Constitution*, Foreign Policy, 2014, The Brookings Institution Massachusetts Avenue, N.W. Washington, D.C. 20036 U.S.A. www.brookings.edu. Fedtke, Jörg, *Directorate-General For External Policies of The Union In-Depth Analysis Comparative Analysis Between The Constitutional Processes In Egypt And Tunisia - Lessons Learnt Overview of The Constitutional Situation In Libya*, Belgia: Directorate B Policy Department European Union, 2014, p. 7.

[12] Bernard-Maugiron, Nathalie, *La place de la charia dans la hiérarchie des normes,* dans Bououn Dupret, *La charia aujourd'hui : Usage de la référence au droit islamique,* Paris La Découverte, 3 2012, pp. 51-58.

countries have been conducted by Salim (2008 & 2014)[13] and Hosen (2005 & 2007).[14] These inquiries were further developed by Armia (2018), Dupret (2016), and Gulam (2016) to examine the relationship between Islam and constitutionalism. This study extends the debate on the integration of sharia into the constitutions of Indonesia, Türkiye, and Saudi Arabia, situating it within the broader context of historical, religious, and state paradigms. This study explores the relationship between religion and constitutional law, drawing on the ideas of Gordon (2010), Fox (2009), Rosenfeld (2020), and Sajó (2008). It highlights the differences in how religious and secular ideas clauses (which delineate the separation of religion and state) are included in constitutions. These differences are linked to the presence of secularism in the political and legal frameworks of Indonesia, Türkiye, and Saudi Arabia. The decision to either include or exclude religion in the constitution serves as a foundation for analyzing the incorporation of Sharia law in the constitutions of these three countries.

This study employs a qualitative socio-legal research design that combines fieldwork with a comparative constitutional analysis. Primary data were obtained through semi-structured interviews with scholars and public members in Indonesia, Türkiye, and Saudi Arabia in 2025. These findings were further supplemented by secondary sources, including constitutional texts, statutory instruments, and other relevant legal documents, specifically, the 1945 Constitution of Indonesia (as amended 1999–2002), the 1982 Constitution of Türkiye (as amended 2017), and the *al-Niẓām al-Asāsī li-l-Ḥukm* (Basic Law of Governance) of 1992. The data were analyzed using a political-legal and religious approach to capture both the normative framework of constitutional law and the socio-political context in which sharia operates. A comparative constitutional method was adopted to examine similarities and divergences across the three jurisdictions. The selection of Indonesia, Türkiye, and Saudi Arabia as case studies is particularly significant because each represents a Muslim-majority state in which the role of sharia in constitutional design constitutes a central and contested issue.

This article will explore various variations of constitutionalism by focusing on three main typologies: Religious Constitution, Secular Constitution, and Constitutional Sharia. The discussion will address both theoretical and conceptual aspects, as well as the practical dynamics that result from the interaction between sharia principles and constitutional norms. Additionally, the analysis aims to understand how these interactions are intertwined with the socio-political dynamics that influence the processes of forming, interpreting, and implementing constitutionalism in the context of modern statehood.

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[13] Salim, A. (2014). The Constitutionalization of Shari'a in Muslim Societies: Comparing Indonesia, Tunisia and Egypt. In *The Sociology of Shari'a: Case Studies from around the World* (pp. 199-217). Cham: Springer International Publishing. Salim, A. (2008). *Challenging the secular state: The Islamization of law in modern Indonesia*. University of Hawaii Press.

[14] Hosen, N. (2007). *Shari'a & constitutional reform in Indonesia*. Institute of Southeast Asian Studies. Hosen, N. (2005). Religion and the Indonesian constitution: a recent debate. *Journal of Southeast Asian Studies*, *36*(3), p. 419.

II. Variations of Constitutionalism

Constitutionalism, in essence, is an act of resistance against absolutism and the arbitrariness of rulers.[15] This doctrine asserts limits upon royal absolutism, where kings held unlimited power and could act arbitrarily. Historically, this principle emerged from the fact that in many countries, royal power was absolute and unbridled and thus had to be limited to prevent tyranny. Constitutionalism, therefore, refers to the principles that relate to fundamental rights and freedoms.[16] For this reason, constitutionalism always points to a system of government as well as the rights and obligations of citizens.

Philosophers such as Hugo Grotius (1583–1645), Thomas Hobbes (1588–1679), John Locke (1632–1704), Jean-Jacques Rousseau (1712–1778), Voltaire (1694–1778), Montesquieu (1689–1755), and Emmanuel-Joseph Sieyès (1748–1836)[17] emphasized their ideas regarding the separation of powers and civil liberties as essential elements of constitutionalism to limit the absolutism of power. In its later development, Western countries began to design constitutionalism through the *Magna Carta* (1215), the *Petition of Right* (1627), and the *Bill of Rights* (1689), the Declaration of Independence, and the *Declaration of the Rights of Man and of the Citizen* (1789), to safeguard rights and freedoms. Social contract philosophers and Anglo-American thinkers inspired these constitutional documents in their application of the separation of powers and civil liberties within their constitutions.[18] In the context of modern states, constitutionalism constitutes the idea that governmental power and authority must be limited in managing the nation-state. Constitutionalism also requires recognizing human rights and the separation of powers within the state.[19]

The concept of constitutionalism has led to the development of secular constitutions that focus on natural rights, such as the right to life and freedom, based on the social contract rather than divine authority or royal power. This approach forms the foundation of constitutions that emphasize individual rights and popular sovereignty. Many Western nations have adopted the concept of secular constitutionalism to reflect the principle of popular sovereignty. In contrast, in Muslim-majority countries, the practice of

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[15] Dehousse, Renaud, *Naissance d'un konstitusionalisme transnasional* , Perancis: éditions du seuil, 2001. http://spire.sciencespo.fr/hdl:/

[16] Suanzes-Carpegna, Joaquín Varela, *L'histoire Constitutionnelle Comparée: étapes et model,* 20 Juli 2010 di kota Tunis, di L'Académie Internationale de Droit Constitutionnel et dans le cadre d'un cours plus ample sur "Problèmes méthodologiques de l'Histoire Constitutionnel. Traduction de l'espagnol de Marie-Angèle Orobon (Université de la Sorbonne Nouvelle-Paris III), pp. 31-43. Sandje, Rodrigue Ngando, *Etat et nation dans le constitutionnalisme africain:etudethématique,* Université de Bourgogne, 2013, p. 34

[17] Lebreton, Gilles, *Libertés publiques & droits de l'homme,* Paris : Dalloz, 2005, pp. 58-66.

[18] Feldman, Jean-Philippe, "La séparation des pouvoirs et le constitutionnalisme: Mythes et réalités d'une doctrine et de ses critiques," paper presented at the *VIIe Congrès Français de Droit Constitutionnel*, AFDC, Paris, 25–27 September 2008, 1, accessed March 28, 2016, http://www.droitconstitutionnel.org/congresParis/comC6/FeldmanTXT.pdf.

[19] J. Lane, *Constitutions and Political Theory* (Manchester: Manchester University Press, 1996), p. 25

constitutionalism has been significantly influenced by religion and culture, with religious principles playing a key role in shaping constitutional ideas. The unique historical context, cultural background, and the political interests of elites all contribute to the constitutional frameworks in these states. Additionally, religion plays a pivotal role in constitutional debates, especially during periods of constitutional change or amendment, as it is intertwined with the historical, political, and social conditions of the society.

From independence to the present day, Indonesia's constitutionalism has been based on a democratic political system in the form of a republic. The Indonesian Constitution (Amendments of 1999–2002) affirms that Indonesia is a Republic (Article 1(1)). This indicates that Indonesia does not have a monarchical system and that sovereignty rests with the people (Article 1(2)). The choice of a democratic republican system reflects the principle of constitutionalism, which limits and divides powers, as well as regulates the rights and obligations of the state. Furthermore, the constitution affirms that Indonesia is a religious state where the values of all religions are accommodated by the state without reference to any particular religion: "The State shall be based upon the belief in the One and Only God" (Article 29(1). This demonstrates that Indonesia is not secular, as its democratic republican system is based on divine values.

Türkiye is not significantly different from Indonesia, as both are republics. The 1982 Constitution (as amended in 2017) declares that Türkiye is a republic characterized by democracy, secularism, and social justice, governed by the rule of law. The Republic of Türkiye also declares loyalty to Atatürk's nationalism (Articles 1 and 2). As a secular republic, Türkiye upholds republicanism and secularism as its state identity.[20] It is therefore unsurprising that the constitution also stipulates that the provisions concerning the republican form of the state and its defining characteristics cannot be amended or proposed for amendment (Article 4). This means that Türkiye will remain a secular republic until social and political changes occur that permit the inclusion of Sharia law in the constitution.

Meanwhile, under the *al-Nizām al-Asāsī li-l-Ḥukm*, Saudi Arabia is both an Arab state and an Islamic state, based upon the Quran and the Sunnah of the Prophet (Article 1), and structured as a monarchy (Article 5(b)). Democracy is not a characteristic of Saudi Arabia, since sovereignty lies in the hands of the king. Unsurprisingly, the constitution also regulates the absolute obedience of the people to the king:[21] "Citizens pledge

[20] Saleem, R. M. A. (2017). *State, Nationalism, and Islamization: Historical Analysis of Turkey and Pakistan* (pp. 31-70). Cham: Palgrave Macmillan / Springer Nature AG. Masmaliyeva, T. (2024). *Turkish Secularism: How to Raise Its Level of Protection*. Cham: Springer Nature Switzerland AG. Sevinc, K., Hood Jr, R. W., & Coleman III, T. J. (2017). Secularism in Turkey. In P. Zuckerman & J. Shook (Eds.), *The Oxford Handbook of Secularism* (pp. 155-171). Oxford, UK: Oxford University Press.

[21] Rentz, G. (2019). The Saudi Monarchy. In *King Faisal and the Modernisation of Saudi Arabia* (pp. 15-34). Routledge. Ismail, R., Lai, Y. M., Ayub, Z. A., Ahmad, A. R., & Wan, C. D. (2016). Kingdom of Saudi Arabia. In *Higher education in the Middle East and North Africa: exploring regional and country specific potentials* (pp. 127-146). Singapore: Springer Singapore.

allegiance to the King based on the Book of God and the Sunnah of His Prophet, and they promise to hear and obey in times of hardship and ease, whether willingly or unwillingly" (Article 6).

Based on the constitutions of Indonesia, Türkiye, and Saudi Arabia, significant variations exist in state structure. Indonesia is a democratic religious republic. Türkiye is a democratic secular republic. Saudi Arabia is an Islamic monarchy that is non-democratic. These variations in constitutionalism in Indonesia, Türkiye, and Saudi Arabia have profound implications, particularly concerning the constitutional inscription of sharia. Saudi Arabia adopted a constitution that establishes sharia as the primary source of law, specifically the Quran and the Sunnah. Indonesia and Türkiye, however, take different paths: both apply constitutionalism without adopting sharia as the constitution.

Nevertheless, all three have drafted constitutions aligned with modern political developments. The constitutions of Indonesia and Türkiye articulate precise formulations concerning the separation of powers, civil liberties, and the protection of human rights. The adoption of Western values has influenced the characteristics of the constitutions of both Indonesia and Türkiye. Meanwhile, Saudi Arabia remains steadfast in its system of absolute monarchy, adapted within a modern political framework.

1. Religious Constitution

Indonesia, as a country with a Muslim-majority population, has a long history of debate regarding the position of Islamic sharia in its constitution. This debate has persisted since the preparatory period of independence and continues to the present day. From the outset, the Indonesian constitution did not enshrine sharia as state law. Sharia has never become a constitutional norm because it has consistently been rejected whenever proposed during periods of constitutional amendment.

In Indonesia, four key periods marked the struggle to incorporate Islamic law into the constitution: the independence preparation period during the sessions of the BPUPKI (Investigating Committee for Preparatory Work for Indonesian Independence), the early independence period during the Constituent Assembly of 1957–1959, the early New Order period during the sessions of the Provisional People's Consultative Assembly (MPRS) in 1966–1968, and the post–New Order period during the sessions of the People's Consultative Assembly (MPR) in 2000–2002. In each of these periods, the political contestation was intense, involving secular nationalist groups and Islamic groups (Islamists) seeking to establish Islam as the state ideology.[22]

Sharia in Indonesia's first constitutional draft was the result of efforts by Indonesian leaders to formulate the foundation of the state before the proclamation of independence. They agreed to accommodate sharia in the constitution, which later became known as the Jakarta Charter *(Piagam Jakarta),* stating: "The State shall be based

[22] Zachary Abuza, *Political Islam and Violence in Indonesia*, (London and New York: Routledge, 2007), p. 84.

upon the belief in God with the obligation to carry out Islamic law for its adherents."[23] This document resulted from a compromise between nationalist and Islamic groups, drafted by the *Committee of Nine* on 22 June 1945. However, the formulation sparked controversy. A day after the proclamation of independence, on 18 August 1945, Rear Admiral Tadashi Maeda conveyed to Mohammad Hatta that representatives from Eastern Indonesia objected to the Sharia clause and threatened secession if it was not removed. Hatta initiated the deletion of the sharia clause to preserve national unity, a decision later ratified by the *Preparatory Committee for Indonesian Independence (PPKI)*, which formally adopted the 1945 Constitution.

During the Constituent Assembly debates of the 1950s, Islamic groups sought to reintroduce sharia into the constitution, but their efforts failed. The discussion culminated in the Presidential Decree of July 5, 1959, which dissolved the Constituent Assembly and reinstated the 1945 Constitution without Sharia provisions. Although sharia was excluded from the constitution, the Jakarta Charter was regarded as a historical document that inspired the 1945 Constitution. Nevertheless, this recognition has remained contentious, as Islamic groups continued their struggle to enshrine sharia constitutionally.

Following the fall of the New Order regime, constitutional reform reignited attempts to incorporate sharia.[24] During the *Majelis Permusyawaratan Rakyat* (MPR, People's Consultative Assembly) sessions of 2000–2002, Islamic parties, including *Partai Persatuan Pembangunan* (PPP, United Development Party), *Partai Bulan Bintang*, (PBB, Crescent Star Party, *Partai Nahdlatul Ulama* (PNU, the Nahdlatul Ummat Party), and *Partai Syarikat Islam Indonesia* (PSII, the Indonesian Islamic Union Party), advocated the inclusion of sharia in the constitution. Other parties, such as Partai Amanat National (PAN, *National Mandate Party)*, *Partai Kebangkitan Bangsa* (PKB, National Awakening Party*)*, and *Partai Keadilan* (PK, Justice Party), proposed broader recognition of religion. In contrast, the Indonesian Democratic Party of Struggle (PDI-P), the Golkar Party, and the Democratic Love-the-Nation Party (PDKB) consistently opposed the incorporation of Sharia law. Ultimately, the Assembly reaffirmed the constitutional formula of 1945: "The State shall be based upon the belief in the One and Only God,"[25] thereby rejecting the inclusion of Sharia.

Ultimately, sharia has never been codified in Indonesia's constitutional history. Instead, the Indonesian constitution enshrines "religion" as a unifying principle for all religious groups. Chapter XI provides constitutional recognition of religion. Article 29(1) states: "The State shall be based upon the belief in the One and Only God." Article 29(2) affirms: "The State guarantees all persons the freedom of worship, each according to

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[23] Bahtiar Effendy, *Islam dan Negara: Transformasi Pemikiran dan Praktik Politik Islam di Indonesia* (Jakarta: Paramadina, 1998), pp. 89-90.

[24] Satya Arinanto, "Piagam Jakarta dan Cita-cita Negara Islam" in Kurniawan Zein & Sarifuddin HA (eds.), *Syariat Islam Yes Syariat Islam No* (Jakarta: Paramadina, 2001), pp. 57.

[25] Arskal Salim, "*Challenging the Secular State",* pp. 90-107.

his/her own religion or belief." Thus, religion is enshrined in the Indonesian Constitution as a fundamental declaration that Indonesia is not a secular state, but a religious one.

Indonesia can be classified as a state with a religious constitution, based on constitutional provisions and religion-oriented legislation. This classification is supported by Constitutional Court Decision Number 140/PUU-VII/2009, which emerged from a judicial review of Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy of Religion. In this decision, the Court determined that the state has an obligation to protect the religions recognized in Indonesia.[26] This decision underscores the Court's commitment to safeguarding religion as part of constitutional values. Furthermore, Constitutional Court Decision Number 97/PUU-XIV/2016, which resulted from a judicial review of the 2006 Population Administration Law, established that followers of local beliefs have the same constitutional rights as adherents of officially recognized religions. The ruling obligates the state to accommodate these rights, thereby broadening the interpretation of "religion" in the constitution to include local belief systems.

Although the constitution does not explicitly mention the term "sharia," various subordinate laws enforce aspects of sharia. These include the Marriage Law of 2006, the Religious Courts Law of 2009, the Compilation of Islamic Law of 1991, the Zakat Management Law of 2011, the Hajj Administration Law of 2019, the Waqf Law of 2004, the Islamic Banking Law of 2008, and the Halal Product Assurance Law of 2014.[27] Furthermore, several statutes provide the legal framework for implementing sharia in Aceh, including the Law on the Administration of the Special Region of Aceh (1999) and the Law on the Government of Aceh (2006). These laws constituted the Aceh Government as a special authority to implement sharia within its jurisdiction, further detailed through local regulations known as Qanun. Examples of these Qanun include the Qanun on the Implementation of Sharia of 2000, the Qanun on the Sharia Judiciary of 2002, the Qanun on Sharia in the Fields of Faith, Worship, and Islamic Symbols of 2002, the Qanun on Islamic Criminal Law of 2014, the Qanun on Islamic Criminal Procedure Law of 2013, the Qanun on the Principles of Sharia of 2014, the Qanun on the Halal Product Assurance System of 2016, and the Qanun on Islamic Financial Institutions of 2018.

Accordingly, the Indonesian constitution serves as a common platform, regardless of religious or belief backgrounds. Public policy derived from sharia is formulated through *objectification*, allowing its values to be accepted as public goods. As Rumadi observes: "The Constitution, as the foundation of common life, must be able to function as a shared

[26]Mufida, et.al., (2024). Islamic Law and the Blasphemy Debate in Contemporary Indonesia. *AHKAM*: *Jurnal Ilmu Syariah*, 24(2).https://doi.org/10.15408/ajis.v24i2.41287

[27] Ulum, Bahrul and Arifullah, Mohd. Arifullah, (2024). Contextualizing Fiqh al-Siyāsah in Indonesia: A Proposed Typology of Islamic Populism. AHKAM: Jurnal Ilmu Syariah, 24(2). https://doi.org//10.15408/ajis.v24i2.37747

platform, regardless of religious or belief backgrounds. A sense of belonging to the state must be built upon this spirit. Therefore, a guiding principle in formulating public policy must be objectified and accepted as a public good (*maṣlahah 'ammah*). From this perspective, claiming that sharia is not accommodated in the constitution is inaccurate. Sharia is indeed accommodated through its objectification as a public good, irrespective of religious or belief backgrounds."[28] Through this lens, sharia is accommodated within the Indonesian constitution.[29]

2. Secular Constitution

Before establishing the Republic of Türkiye, the Ottoman Empire applied sharia as the state's legal system.[30] The role of sharia during the Ottoman Caliphate was significant, but the legal system did not rely solely on a single source. The Ottoman Empire developed a unique legal system by combining two main elements: sharia and *Qanun*.[31] In Ottoman theory, sharia was the sacred law derived from the Quran and Sunna, interpreted through the Hanafi school of fiqh, which governed personal status, family law, and many civil matters that formed the basis of Islamic law in the Ottoman courts. By contrast, the qanun was the sultan's secular law, written down in the *kanunname* (law codes).

The Qanun was created to address the state's evolving requirements, particularly in areas such as criminal law, taxation, and administration. For instance, Ottoman *kanunname* governed the *timar* (military fief) system, going beyond traditional Hanafi land and taxation regulations to define the rights and obligations of *sipahi*s (professional cavalrymen) and their peasants.[32] Similar to this, in terms of criminal law, the sultan's qanun established specific punishments for offenses such as banditry, corruption, and rebellion. These punishments were frequently more severe and detailed than the broad guidelines found in Islamic jurisprudence (fiqh). In these situations, the qadi followed the sultan's qanun when it offered a more precise or useful guideline for state governance, but applied sharia when it was clear.[33]

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[28] Interview with Rumadi, 12 October 2024, Jakarta

[29] Taufiqurrohman, A.H.A., et.al., (2024). The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia. AHKAM: Jurnal Ilmu Syariah, 24(1). https://doi.org//10.15408/ajis.v24i1.33155

[30] Ayoub, S. (2015). The Mecelle, Sharia, and the Ottoman State: Fashioning and refashioning of Islamic law in the nineteenth and twentieth centuries. *Journal of the Ottoman and Turkish Studies Association*, *2*(1), pp. 121-146.

[31] Rubin, A. (2022). The Positivization of Ottoman Law and the Question of Continuity. In *State Law and Legal Positivism: The Global Rise of a New Paradigm* (pp. 150-177). Brill. Ayoub, S. A. (2019). *Law, empire, and the Sultan: Ottoman imperial authority and late Hanafī jurisprudence*. Oxford University Press.

[32] V. L. Ménage and Colin Imber, *Ottoman Historical Documents: The Institutions of an Empire* (London: School of Oriental and African Studies, University of London, 1967), 99; Colin Imber, *The Ottoman Empire, 1300–1650: The Structure of Power* (Basingstoke: Palgrave Macmillan, 2002), pp. 258–59.

[33] Colin Imber, *Ebu's-su'ūd: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 221-233.

In this case, we can say that the Ottoman *Kanunname* was not seen as a replacement for Sharia, but rather as a necessary supplement to meet the practical needs of a vast, multi-confessional empire. The sultan, as both ruler and caliph, was the ultimate source of legal authority, and his qanun could define or even modify the practical application of sharia in state affairs, especially in fiscal and criminal matters. This dual system indicates that although sharia was regarded as the supreme law, the Ottoman Empire was pragmatic enough to create qanun to maintain order, stability, and justice. This pragmatic dualism was later given a more systematic theological and legal justification by the chief jurist Ebu's-suud (d. 1574), who served as şeyhülislam under Süleyman the Magnificent (d. 1566). Ebu's-suud argued that the sultan's qanun should be brought into closer conformity with sharia, so that state law would not contradict Islamic principles. In his fatwas, he often sought to reinterpret or justify existing qanun rules in Islamic terms, for example, by redefining certain taxes as forms of zakat or by using legal fictions (*hiyal*) to reconcile Ottoman fiscal practices with Hanafi doctrine.[34] In this way, the Ottoman legal system was not simply a secular–religious split, but an attempt to subordinate the sultan's qanun to the framework of sharia, at least in theory.

Interestingly, the qanun, however, was not simply "derived from Western law" in the classical period, but rather a body of sultanic legislation that drew on a mix of Islamic legal traditions, Byzantine administrative practices, and earlier Anatolian state models.[35] The Ottoman law began to integrate significant aspects of European legal codes, particularly those from France, only during the Tanzimat reforms of the 19th century.[36] In earlier centuries, however, the qanun represented an Ottoman adaptation of Islamic law and pre-Ottoman governance, rather than a direct import from Western legal systems.

Since the 19th century, the Ottoman legal system has been gradually influenced by Western law. The dual system was codified in the *Kânûn-ı Esâsî* of 1876, the first Ottoman constitution, during the late Ottoman era. That constitution formally recognized Islam as the state religion and the sultan as both the political ruler and the religious leader by declaring in Article 1 of this constitution that "the religion of the state is Islam" and in Article 2 that the sultan was the caliph of the Muslims. While the state adopted Western-style codes (such as the French penal code and the Swiss civil code) for many other areas, Sharia continued to serve as the foundation for personal status law for Muslims. The legal system of the modern Turkish Republic was directly derived from this hybrid system, which combined Islamic state principles with secular laws in a Western style.[37]

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[34] Colin Imber, *Ebu's-su'ud: The Islamic Legal Tradition*, p. 145.

[35] Colin Imber, *Ebu's-su'ud: The Islamic Legal Tradition*, pp.115-116.

[36] Interview with Talip Küçükcan, 11 May 202, Jakarta.

[37] Roderic H. *Davison, Reform in the Ottoman Empire, 1856–1876* (Princeton, NJ: Princeton University Press, 1963), pp. 358-408; Ernest Edmondson Ramsaur Jr. (1957). *The Young Turks: Prelude to the Revolution of 1908* (Princeton, NJ: Princeton University Press, pp. 5-8.

Following the collapse of the Ottoman Empire, Mustafa Kemal Atatürk established the Republic of Türkiye in 1923. Atatürk undertook a series of reforms to transform Türkiye into a secular state.[38] Atatürk's secular reforms were implemented in stages. Key aspects of these reforms include the abolition of the caliphate in 1924,[39] the establishment of a secular court system in 1926,[40] and the removal of the clause stating that Islam was the state religion from the constitution in 1928, which had been declared during the Ottoman era.[41] While the 1924 constitution (later modified in 1961 and 1982) defined Türkiye as a secular nation. The new legal system adopted the codes of Switzerland, Italy, and Germany for civil, criminal, and commercial law. Article 2 of the 1982 Constitution, therefore, codifies a system in which the state has no formal religion, and all citizens enjoy freedom of religion, in stark contrast to the Ottoman model, whereby Islam was constitutionally the state's religion.

Türkiye officially became a secular state in 1936.[42] The Constitution explicitly provides that Türkiye is a secular state. This means that the state has no official religion and that all citizens enjoy freedom of religion. Article 2 of the 1982 Constitution declares: "The Republic of Türkiye is a democratic, secular, and social state governed by the rule of law." Secular groups in Türkiye support the principles of secularism established by Mustafa Kemal Atatürk, notwithstanding existing differences of opinion. They are generally concerned about the growing influence of religion in politics and maintain the view that the state must remain neutral with respect to religion. Inevitably, these secular groups oppose the application of Islamic Sharia within Türkiye's legal system. They argue that secularism is a prerequisite for democracy and progress.

Secularism implies that the Turkish Constitution does not incorporate sharia as state law. On the contrary, Türkiye affirms itself as a secular state, separating sharia from state authority. This outcome is grounded in three values that are deeply rooted in Türkiye: secularism, modernism, and nationalism.[43] These three values shaped modern Türkiye and influenced its Constitution, which in turn revised the provisions of the first Ottoman-era constitution that had declared Islam as the state religion. Nevertheless, the Kemalist secularism (*laiklik*) was not only the separation of religion and state but also a system in which the state strictly controlled religion through agencies like the Presidency of Religious Affairs (Diyanet). This allowed the state to control religious education, appoint imams, and manage mosques while preventing religious leaders from interfering in

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[38] Jacob M. Landau, ed., *Atatürk and the Modernization of Turkey* (Leiden: Brill, 1984).

[39] Bernard Lewis, *The Emergence of Modern Turkey* (London: Oxford University Press, 1961), pp. 264-265.

[40] Esin Örücü. (2013). "A Legal System Based on Translation: The Turkish Experience," *Journal of Civil Law Studies* 6, no. 2: pp. 445–471.

[41] Erik J. Zürcher, *Turkey: A Modern History* (London: I.B. Tauris, 1993), pp. 181-183.

[42] Bottoni, Rinaldo. (2007). "The Origins of Secularism in Turkey," *Ecclesiastical Law Journal* 9, no. 2 (2007): pp. 175–86.

[43] Sibel Bozdoğan and Reşat Kasaba, eds., *Rethinking Modernity and National Identity in Turkey*, vol. 7 (Seattle: University of Washington Press, 1997).

politics. This scheme was supported as being crucial for contemporary times, reason, and national unity as opposed to the Ottoman paradigm, where the sultan and the şeyhülislam jointly embodied both political and religious authority. Accordingly, the modern Turkish Constitution redefines the role of religion as one state-managed subject subordinate to the secular republic, as well as "excludes sharia from the constitution."

This shift was based on the argument that Islam was incompatible with modernity, which required rationalism, whereas Islam continued to uphold traditional and mystical values. For this reason, Türkiye has not integrated Sharia into its constitution or legislation.[44] Similarly, the modernist vision in Türkiye asserted that religion should not hold authority in the realm of political decision-making. The implication of this policy was the closure of Sufi institutions, the dissolution of the ministry responsible for sharia, and its replacement with the Diyanet, which no longer possessed political authority and functioned only to oversee imams and preachers. Furthermore, religious parties are prohibited in Türkiye; only ideological parties are allowed. As the ruling party, the Justice and Development Party (AKP)[45] is not classified as a religious party but as an ideological party oriented toward welfare, peace, and freedom.

The Diyanet functions as a state bureaucracy that administers Sunni Islam, while other religious communities (such as Alevis and non-Muslim minorities) are not fully integrated into this system, reflecting the state's selective management of religion. Political parties may have religiously conservative platforms, but they must present themselves as "ideological" rather than explicitly religious, in line with the constitutional principle that the state is neutral in matters of religion. Although Türkiye is a secular state, it still employs religious institutions as tools of social control. In other words, sharia cannot be formally adopted into statutory law. Sharia cannot coexist with secularism, since the state has adopted a policy of excluding sharia from the constitution. Instead, the Turkish Constitution incorporates Western values, despite the country's history as an Islamic caliphate.[46] The absence of Islam in the constitution does not signify atheism, although the word "Islam" may not be explicitly mentioned in the constitutional text.[47] Thus, Islam and sharia have not been adopted into Türkiye's constitution and legal system. If laws correspond with sharia, they are primarily in the name of human rights and democracy, or because they are consistent with Western legal principles.

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[44] Interview with Talip Küçükcan, 11 May 2024, Jakarta.

[45] Ihsan Yilmaz and Galib Bashirov. (2018). "The AKP after 15 Years: Emergence of Erdoganism in Turkey," *Third World Quarterly*39, no. 9: 1812–30; Meltem Müftüler-Baç and E. Fuat Keyman. (2012). "Turkey under the AKP: The Era of Dominant-Party Politics," *Journal of Democracy* 23, no. 1: pp. 85–99.

[46] Interview with Ismail Cebeci, Marmara University, 11 July 2024, Marmara, Türkiye.

[47] Interview with Sami Erdem, Marmara University, 11 July 2024, Marmara, Türkiye.

3. Constitutional Sharia

The Kingdom of Saudi Arabia is recognized as a nation that primarily bases its legal framework on Islamic law, or sharia, which serves as the fundamental source for its judicial and legislative systems. This is reflected in various aspects, from criminal and civil to family law. The Quran and the Sunnah (teachings of the Prophet Muhammad, PBUH) constitute the primary sources of law in the Saudi legal system. These two sources are regarded as the immutable constitution of the state. The Kingdom of Saudi Arabia does not apply constitutionalism. With its monarchical system, Saudi Arabia is a state centered on the king, who holds absolute power. All state institutions are subject to the king as the bearer of sovereignty. Unlike democratic states, the Kingdom of Saudi Arabia explicitly declares that the fundamental principles contained in the Quran and the Sunnah constitute the country's Basic Law. Nevertheless, the Kingdom has the *al-Niẓām al-Asāsī li-l-Ḥukm* (Basic Law of Governance), drafted in 1992 by King Fahd, with sharia as its ground norm.[48]

Article 1 states: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic State. Its religion is Islam, and its constitution is the Book of Allah (the Quran) and the Sunnah of His Messenger." This article asserts that Saudi Arabia is not founded on popular sovereignty or a social contract, but rather on divine sovereignty derived from the Quran and the Sunnah. The implication is that all state regulations and policies are based on sharia as the source of law.

In its implementation, Article 48 explicitly states: "The courts shall apply the provisions of sharia in accordance with what is indicated in the Quran and the Sunnah, and the regulations enacted by the ruler that do not contradict the Quran and the Sunnah." Thus, all legal disputes are settled by judges (*qādi*) who directly refer to the Quran and the Sunnah, rather than to codified criminal or civil statutes, relying instead on the jurisprudence of the Hanbali school and the fatwas of scholars (*Hay'at Kibār al-'Ulamā'*).

In matters related to contemporary issues not explicitly regulated in the Quran and Sunnah, such as traffic regulations, corporate law, and technology, Saudi Arabia employs legal instruments known as *qānūn* or *niẓām* (regulations or royal decrees). *Qānūn* represents favorable legislation enacted by the state. Still, its validity depends on two principal conditions: (1) it must not contradict (*ta'āruḍ*) the Quran or authentic hadith, and (2) it must uphold the objectives of sharia (*maqāṣid al-sharī'ah*), such as the protection of religion, life, intellect, lineage, and property.[49] This concept is known as *siyāsah shar'iyyah*,[50] which refers to policies formulated by the ruler for public welfare, provided that they do not deviate from the sharia.

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[48] Nadia Nadir, "Sistem Pemerintahan dan Kebijakan Luar Negeri Arab Saudi", *Qaumiyyah: Jurnal Hukum Tata Negara,* Vol.1, No.2, 2020, pp. 166-167.

[49] Interview with Nasrulllah Jasam, 9 September 2025, Jakarta

[50] Interview with Stéphane Lacroix, 10 September 2024, Depok

Stéphane Lacroix observes: "Thus, the argument of *maṣlaḥah* will be employed to enable the princes to exercise *siyāsah* in a relatively broad sense, without consulting the *'ulamā'* when it comes to political decisions, because of the notion that *umarā' adrā bi-l-maṣlaḥah* (the rulers better understand public interest)." Accordingly, sharia serves as the constitution of Saudi Arabia, while state institutions remain subject to the king's decisions.

III. Interaction of Sharia, the Constitution, and Socio-Political Dynamics

The decisions of Indonesia and Türkiye not to incorporate sharia into their constitutions are the result of a complex interplay of historical, social, political, and cultural factors. In Türkiye, the influence of Mustafa Kemal Atatürk was highly dominant,[51] notwithstanding the later dominance of the Justice and Development Party (AKP), which is ideologically oriented toward Islam. Atatürk's radical reforms abolished the Ottoman Caliphate, removed sharia law, and adopted Western legal codes that shaped Türkiye's national identity for decades. This contrasts with Indonesia, where Sukarno, as a founding father, exerted influence primarily within Marhaenist political circles such as the Partai Demokrasi Indonesia Perjuangan (PDI-P, Indonesian Democratic Party of Struggle). Still, his influence never extended deeply into major Islamic organizations such as Nahdlatul Ulama (NU) and Muhammadiyah.

Nevertheless, both Türkiye and Indonesia have consistently sought integration with the West. In Türkiye, secularism was regarded as one of the prerequisites for achieving this goal, which was to be accepted internationally, especially by Western countries. In contrast, Indonesia's effort to integrate with the West did not take the secularist path; instead, it encouraged religion to influence the political and legal system. It is therefore not surprising that the only area of Islamic law not formalized by the state is criminal law, which still refers to the Western legal system. Although sharia has not been accommodated in the constitution, Indonesia, as a religious state, has issued regulations concerning Islam.

Meanwhile, Türkiye abolished its religious-based legal system and replaced it with a civil law system adopted from European countries, notably Switzerland and Italy. The Ottoman Family Law of 1917 was repealed and entirely replaced by the Turkish Civil Code of 1926, as part of the significant reforms aimed at secularizing modern Türkiye. This replacement was a radical step that completely separated family law from sharia and

[51] Krysa, I. (2011). *The rise of Islamism in Turkey: failure of Kamalism or a new development alternative?*, (Master's thesis). Saint Mary's University, Halifax, NS, Canada, p. 47. Cizre-Sakallioglu, U., & Cinar, M. (2003). Turkey 2002: Kemalism, Islamism, and politics in the light of the February 28 process. *The South Atlantic Quarterly*, *102*(2), pp. 309-332.

adopted the secular legal model from Switzerland.[52] Therefore, there was no revision of the Ottoman law; instead, it was entirely repealed and replaced with a new legal system. This law established monogamy, granted equal rights for men and women in divorce, and regulated inheritance rights without gender-based discrimination.

Although Islamist groups in Indonesia and Türkiye have gained greater influence in recent years, secular groups still retain significant power. Incorporating Islamic sharia into the constitution could trigger serious political conflict. Constitutional amendments will always involve debates over the position of sharia in the constitution, both from Islamist and nationalist-secular groups. Moreover, there is no single consensus in both countries on how sharia should be implemented. Such conditions make Indonesia and Türkiye continuously characterized by tensions between secular and Islamist groups. Moreover, substantial populations of religious and ethnic minorities in Indonesia and Türkiye make the inclusion of sharia in the constitution potentially problematic, as it could lead to social tensions and discrimination against these minority communities.

The situation in Indonesia and Türkiye differs from that in Saudi Arabia, as the Islamic monarchy. Political divisions among groups do not occur in Saudi Arabia,[53] although a few scholars still dare to criticize the king's policies.[54] The king exercised full authority over all sectors of society, which prevented any discussion on adopting sharia as the legal system.[55] Although Saudi Arabia does not have a written constitution, the Quran and Hadith are established as sources of law, which judges directly interpret. The interpretation of sharia in Saudi Arabia lies in the hands of scholars/judges using the Hanbali school, under the control of the monarchy. The implication is that there is no longer any distinction in the interpretation of Islamic sharia as outlined in the Quran and Hadith.

IV. Conclusion

Sharia in Muslim-Majority countries such as Indonesia, Türkiye, and Saudi Arabia has undergone profound dynamics. The political struggle to incorporate sharia into the constitution remains a recurring issue in states that do not explicitly declare themselves as Islamic. This is the case in Indonesia and Türkiye, where political contestations over the accommodation of sharia within constitutional frameworks persist. By contrast, as an Islamic kingdom, Saudi Arabia has designated the Quran and the Sunnah as the basis of its constitution. These tendencies illustrate distinct modes of constitutional accommodation of sharia in Indonesia, Türkiye, and Saudi Arabia. Indonesia tends to

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[52] Feroze, M. R. (1962). Family laws of the Turkish republic. *Islamic Studies*, *1*(2), 131-147. Koçak, M. (2010). Islam and national law in Turkey. *Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present*, pp. 231-272.

[53] Interview with Nasrullah Jasam, 9 September 2025, Jakarta & Iman Ni'matullah, 12 September 2025, Mecca

[54] Interview with Stéphane Lacroix, 10 September 2024, Jakarta

[55] Interview with Abdul Aziz, 10 July 2024, Mecca

embrace a form of religious constitutionalism that does not enshrine Islam or sharia within its constitution. Instead, the norm of "divinity" (*Ketuhanan*) is accommodated, reflecting a pluralistic orientation. Türkiye, in this case, adheres to a model of secular constitutionalism that firmly divides religion and sharia from the constitutional framework, ensuring that religious or Islamic principles have no place within its constitutional text. In sharp contrast, Saudi Arabia adopts a puritanical constitutionalism, in which the entirety of the Qur'an and the Sunnah serves as the ultimate source of law within the constitution. These divergent models of constitutionalism across the three Muslim-majority states underscore the varying religious orientations and political currents among their societies, elites, and ruling authorities.

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Interview

Interview with Abdul Aziz, 10 July 2024, Mecca, Arab Saudi

Interview with Ismail Cebeci, 11 July 2024, Marmara University, Türkiye

Interview with Nasrullah Jasam, 9 September 2025, Jakarta, Indonesia

Interview with Iman Ni'matullah, 12 September 2025, Mecca, Arab Saudi

Interview with Rumadi, 12 October 2024 Jakarta, Indonesia

Interview with Sami Erdem, 11 July 2024, Marmara University, Türkiye

Interview with Stéphane Lacroix, 10 September 2024, Jakarta, Indonesia

Interview with Talip Küçükcan, 11 May 2024, Jakarta, Indonesia