

## **Islam And The State From The Perspective of Efforts To Establish Positive Law In Indonesia**

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### **Abstract**

*The struggle to make Islamic law the basis of the state is nothing new. Indonesia, which is diverse, has a variety of ethnicities, religions, races and groups, forcing the struggle for Islamic law as the basis of the state to experience many challenges. Even though the majority of Indonesia's population is Muslim, this does not necessarily make the struggle easier. Ulama differ in their opinions regarding the necessity of implementing Islamic law. There are scholars who are of the opinion that those who are not ruled by Islamic law are considered infidels and conversely there are other scholars who are of the opinion to allow those who are not ruled by Islamic law so that the desire to make Islamic law a positive law will be an effort that will encounter many challenges and obstacles. Apart from that, there is no Islamic leader who can be accepted by all groups. The relationship between Islam and the state must be well understood and translated thoroughly and carefully considering the conflicts that may arise and could lead to division and disintegration of the nation. The relationship between Islam and the state actually ended long ago when the Founding Fathers (Muhammad Yamin, Soepomo and Soekarno) chose the concept of a national state based on Pancasila rather than a religious state. Accepting Pancasila as the basis of the state was a smart choice for the founders of the nation considering the conditions of ethnic, religious, racial and inter-group diversity (pluralism) that exist in Indonesia. The better the relationship between Islam and the state, the greater the opportunity for Islamic law to be applied as positive law in Indonesia, conversely, the more tenuous the relationship between Islam and the state, the smaller the opportunity for Islamic law to be applied as positive law in Indonesia.*

Keywords: Islam and State, Positive Law, Islamic Law

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## **I. INTRODUCTION**

A just and prosperous government has been experienced by Muslims and nonMuslims at the time of Prophet Muhammad's migration to Medina. Islamic politics during the Prophet's time in Medina related to government has succeeded in forming a just and prosperous government among diverse communities (Muslims, Christians, and pagan

Arabs) by applying the concept of caliphate but still respecting the non-Muslim community. All religious groups and tribes at the time of the Prophet in Medina had the same rights, treatment and obligations, without having to impose their will on other groups, both religiously and socially. The concept of caliphate was continued by the companions of the Prophet, but after the companions of the Prophet, the concept of caliphate has shifted and is no longer applied.

Since the Prophet's death until now, the struggle to pursue the beautiful dreams of that era has been going on for a long time and has been full of turmoil. History proves that in various forms of government that have existed in the Islamic world, there has been no agreement on the concept of an Islamic State because the term Islamic State has never been mentioned in the Al-Quran and Hadith; What exists are Islamic values which must be used as the basis for society and the state.

Before Islam entered the archipelago, Hindu and Buddhist influences were already very embedded in the kingdoms of the archipelago. Then Muslim traders came from Gujarat, India, to influence the development of Islam in the archipelago.

Western European immigrants who came later discovered that the Indonesian kingdoms had made Islam the state religion. The catastrophe of life in the archipelago began in the form of colonialism and capitalism brought by Western European immigrants, with the aim of controlling the archipelago's natural resources while promoting 3G (gold, gospel, glory). This period of Western influence is called the "Indonesian modern era".

The positive and negative impacts of modernization cannot be avoided for countries throughout the world. First, the positive impact of modernization is that the formation of social life has improved and become better, increased efficiency and effectiveness in doing things, there has been a change in society's values and attitudes towards a more open direction due to strengthening social integration, there has been an increase in the fields of science and technology (science and technology), industry and transformation, in terms of politics and democracy there has been an increase in public awareness.

Second, the negative impact of modernization, namely in the social and economic fields, inequality is increasing and increasing in society, there is a lot of natural and environmental pollution, increasing conflict between communities and crime cases, viewing Western countries too excessively, including state ideology. The West is viewed excessively, there is a technological gap in society, there is a shift in values in local culture which ultimately eliminates customs that have been passed down from generation to generation. The modernization experienced by Indonesia, with the majority of its

population being Muslim, has caused a very pronounced social and cultural transformation. Values, ways of thinking, habits must be replaced with new ones, including religious values.

In the life of the nation and state in the modern era which is marked by very rapid developments in the fields of science, technology, politics, economics, social and culture, there are four views in placing the position of a religion:

First, religion is seen as something that is dangerous for society like an opium, or religion is an opium (Karl Marx's view which is famous but misinterpreted because it was cut into pieces to attack Karl Marx because it seemed as if his teachings were hostile to religion, or vice versa to corner those who adhered to it).

religion by people who are anti-religious. Religion has an important role in society which is similar to the function of opium for injured/sick people by reducing pain and giving pleasant feelings to the sick). Therefore, in state life, religion has no place at all. Religion is a creation/invention of religionists in collaboration with the authorities to fool the people so that they can easily be controlled, controlled and exploited.

Second, religion or belief must be separated from the state. Religion is not arbitrarily removed or ignored but only rejects the role of religion in public life. In state and social life, religion is not used as the basis for state and social regulations. This concept is known as secularism, namely the understanding or view that holds that morality does not need to be based on religious teachings.

This view became the basis of the ideology of Western capitalism. The view of secularism can be divided into two through a sociological approach (by carrying out desacralization, namely eliminating things that have been considered sacred, namely political desacralization which means that politics is not sacred, religious and spiritual elements must be removed from politics because this is the initial condition social and political change can occur to achieve progress) and a philosophical approach (by completely separating religion and state). There should be no connection between the state and religion at all because this will hinder change and hinder progress. Therefore, adherents of secularism strongly oppose the application of Islamic law in political life.

In the view of secularism, world problems must be regulated and managed in ways other than those of God. This understanding requires the state to be neutral in matters of the beliefs of its population. Religion is a personal matter between humans and their God. Secularism is neutral on religious issues, eliminating or minimizing the role of religion in

the public sphere. Secularism is an important element of modernization and is considered the only principle that guarantees religious freedom to protect minority groups.

Religion and the state are two different entities, each having their own areas of work, so their existence must be separated. From this dichotomous understanding, the positive law that applies is law that truly originates from human agreement (secularistic paradigm).

A pamphlet published by Ali Abd al-Raziq (1888 - 1966 AD) in 1925 which essentially states that Islam is a religion that does not have a state/government. Islam has nothing to do with the caliphate system of government. Khulafaur Rasyidin's caliphate is not a religious or Islamic political system, but a secular system. For Ali Abd al-Raziq, Islam is only a spiritual treatise, the formation of the state is not recommended by religion (shari'at) but based on the consideration of the people's intellect. Prophet Muhammad had no intention of forming a state. He is only a messenger who is in charge of making pure religious claims, there is no tendency to rule or form a state because he does not have power and government, nor does he insist on a certain system of government through which they should be ruled by the Muslims; but Islam has given us absolute freedom to organize the country according to intellectual, social and political conditions.

This paradigm was adopted later by supporters of a "secular state," which completely separated religious affairs from the state.

Third, religion and the state have a symbiotic relationship, namely a relationship that is reciprocal and requires each other (symbiotic paradigm). The state needs religion for moral, ethical and spiritual development. Likewise, on the contrary, religion needs the state as an instrument in preserving and developing religion; Apart from that, religion also needs a state so that all religious regulations can be implemented. Religion cannot be separated from the state because religion regulates all aspects of citizens' lives, including religion being involved in political and state aspects. Religion must be a cornerstone in state life in order to maintain morals. Religion and state are two different entities, but they need each other and cannot be separated.

According to the figure "Ibn Taymiyah (1263 - 1328 AD)", "State and religion are truly close and become one; without coercive state power, religion is in danger. A state without the discipline of revealed law will certainly become a tyrannical organization."

According to al-Mawardi (975-1059 AD), who emphasized that state leadership (imamah) is an instrument for continuing the prophetic mission to maintain religion and world order. The maintenance of religion and the regulation of the world are two different types of activity, but they are symbiotically related.

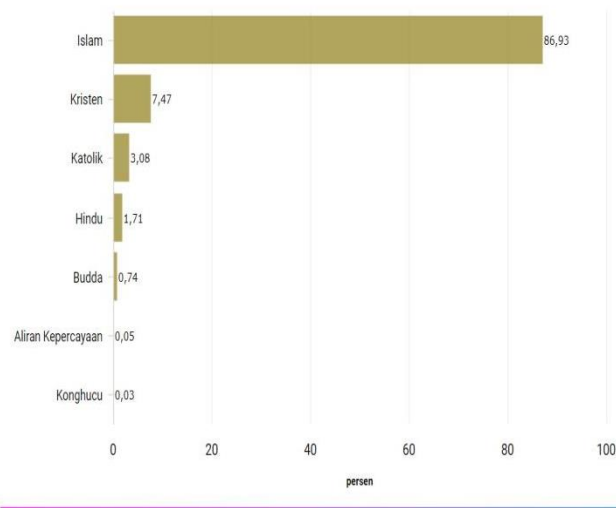
Fourth, religion and the state are a unity that cannot be separated (integrated) or is called a religious state, where the state carries out government on the basis of God's sovereignty with the consequence that state regulations must be carried out according to God's laws (integralistic paradigm). The integrated state and religion are the authorities that regulate and determine all things, which are two entities (religious entity and state entity) that help and complement each other, upholding the sovereignty and belief in the Almighty God. State life is regulated using legal and religious principles. According to this integralistic paradigm, both (religion and state) are two unified institutions, where the state is both a political institution and a religious institution. Politics or the state is in the realm of religion, because religion and the state are fused, the result is that society cannot differentiate between state rules and religious rules.

The group supporting a religious state or in this context an "Islamic state", adheres to sharia and does not recognize the separation between religion and state (the Islamic concept of religion and (at the same time) state). According to this group, Islamic law is the basic source for governing the state. Islam must be built on the sharia legislation brought by the Prophet from God and must be applied in any condition.

This integralistic paradigm is divided into two ideas, namely theocracy in the Shi'ite perspective (Imamah for the Shi'ites is a religious leader as well as a state leader who has the lineage of the Prophet) and theo-democracy in the Maududi perspective (supreme sovereignty is in the hands of Allah, humans is obliged to carry out Allah's commands. Every human being is a caliph of Allah, and therefore there are no privileges among certain humans, families, groups or races. Every Muslim is a caliph of Allah according to his individual abilities. Thus, he is individually responsible to Allah. Caliphs Allah (Muslims) appointed a caliph as their representative to implement the rules of Allah. Non-Muslims are not allowed to occupy high positions in government and are not allowed to establish political parties).

Islamic political thought in Indonesia continues to walk between the integralistic paradigm, the symbiotic paradigm and the secularistic paradigm. Today's Indonesia is in the symbiotic paradigm of thinking. Even though Islam is the majority religion, it does not make Islam the state religion and does not make Islamic sharia the main source of law making. Also, do not make Islam a political ideology and government system.

As a country that does not separate state and religion (a secular state) nor is it a religious state, Indonesia is a country that guarantees the freedom of its citizens to believe in and adhere to a particular religion.



Based on data from the Directorate General of Population and Civil Registration (Dukcapil) of the Ministry of Home Affairs, Indonesia's population was 272.23 million people in June 2021. Of this number, 236.53 million people (86.88%) were Muslim. This means that the majority of Indonesia's population is Muslim.

On the other hand, Indonesia, with its diverse demographics and geographical conditions in the form of thousands of islands spread widely with so many different tribes, races, religions and groups (multi-cultural), causes some groups to want a liberal and secular life. In his opinion, to accommodate minority groups, it is necessary to make Indonesia a secular country so that an ideal country can be created. However, behind that, the current Indonesian constitution stipulates that Indonesia is not a secular country. In reality, Indonesia does not implement Islam as a state religion, does not apply Islamic sharia as the main source of law making, and does not implement Islam as a political ideology and government system.

Before Indonesia became independent (even before the arrival of the Dutch to Indonesia, Islamic law already existed and was enforced in the kingdoms/ sultanates of the archipelago, Islamic law already had a strong role and had a strong position in society and government) until since the process of independence or the formation of the Indonesian state in When the 1945 Constitution was drafted, there had been a long dialectic between secularism and Islamization. The Founding Fathers with an atmosphere of mysticism built



by various different religious and ethnic groups (multi-cultural), have agreed that Indonesia is not a religious country (theocratic country) but a country in which Islam and Islamic life have a very important place. respected and protected as stated in the Preamble to the 1945 Constitution and articles 28 and 29 of the 1945 Constitution.

### **The relationship between Islam and the State**

Overview of Islamic Politics in Indonesia in the period before the New Order, the New Order period, and the period after the New Order.

Before the New Order era, modern Islamic thought movements emerged, namely Islamic organizations, such as Syarekat Dagang Islam (SDI), founded in 1909; Syarekat Islam (SI) was founded in 1911; Muhammadiyah was founded in 1912; Islamic Association (Persis) was founded in 1923; Nahdlatul Ulama (NU) was founded in 1926; all organizations are on the island of Java, while Tawalib was founded in 1918 on the island of Sumatra.

After the independence of the Republic of Indonesia (17 August 1945), the struggle of the Indonesian people through the Old Order Era (1945-1966), under the leadership of President Soekarno, in this era the thoughts of the Indonesian people were divided into secular nationalists (the idea of a national state based on Pancasila) and Islamic nationalists (idea of an Islamic state). Through a Presidential Decree dated July 5 1959, the idea of an Islamic state was defeated by the idea of a national state based on Pancasila. During the New Order period, in the early days of the New Order regime, the relationship between Islam and the state was more towards suspicion and conflict. The New Order regime was very oppressive and firm (repressive) towards things that disturbed national integration and political stability because the New Order regime was very focused on economic development which had to be supported by political stability and national security. Islamic political ideas must be conveyed very carefully and this idea falls in line with the implementation of the Single Principle, namely the ideology of Pancasila which must be included in every Article of Association and Bylaws of political parties and social organizations, namely Law no. 8 of 1985 concerning Community Organizations.

The relationship between Islam and the state during the New Order era in several policies: first, an antagonistic relationship (1967 - 1982), namely where there was disharmony between the government and Muslims, second, a critical reciprocal relationship (1982 - 1985), namely where the government issued the Single Principle, namely requiring ideology. Pancasila is included in every articles of association and bylaws of political parties and community organizations, and the three accommodative relationships (1985 -

1994) are relationships that are mutually beneficial and complementary for both parties. Why do political accommodative relationships occur?

### **From a government perspective**

First, Islam in Indonesia is no longer a force that can threaten national political stability. Second, in order to seek support from Muslims, the government provides political accommodation. Third, by providing political accommodation, it will be easier to regulate Islamic politics in Indonesia.

### **From an Islamic perspective**

Firstly, by accepting political accommodation, it means there is the possibility of having more access in policy making so that they are no longer considered a fringe player. Second, as a reward for government policies that have given more attention to Islam in the future.

Before the Single Principle was implemented by the government, Nahdlatul Ulama expressed the view that Pancasila was in accordance with Islamic values. In the National Conference of Alim Ulama on December 21 1983 in Situbondo, it was stated that Pancasila as the basis and philosophy of the Republic of Indonesia is not a religion, cannot replace religion and cannot be used to replace the position of religion.

For Nahdlatul Ulama (NU), Islam is aqeedah and sharia, covering aspects of human relations with God and human relations.

The basis of NU's consideration to accept Pancasila as the sole basis is as follows: First, the concept of fitrah, that Islam is an innate religion, which perfects all the goodness already possessed by humans and does not aim to eliminate these values.

Second, the concept of divinity, that is, a state based on the divinity of the Almighty, reflects the Islamic view of the oneness of God, also known as monotheism. Pancasila is the philosophy of the nation, while religion is a revelation, and the morals in Pancasila are not against Islam. Third, the rule that prioritizes efforts to avoid danger or riots over implementing benefits that involve greater risk. Fourth, Pancasila is a national agreement (mitsaq) between the Muslim community and other groups from Indonesian society to establish a sovereign state.

After the government implemented the Single Principle, there was rejection because it believed that Pancasila was contrary to Islamic values. The United Development Party (PPP), which was one of the three parties existing at that time (Golkar, PDI and PPP), rejected the Single Principle. According to Deliar Noer (a historian), PPP refused because:



First, by accepting Pancasila, it meant placing Islam on an equal footing with other religions in relation to politics. Second, Islam does not seem to be in accordance with the demands of the times in politics. Third, it seems that Islam has caused chaos in the past, or that Islam is not in line with Pancasila in the political field. Fourth, PPP indirectly admitted that the chaos during the last general election campaign was caused by PPP still using Islamic principles in addition to Pancasila.

After the New Order, the overthrow of President Suharto as President on May 21 1998, and the new government under the leadership of B.J. Habibie stated that the elections would be held in 1999, the Muslims emerged by establishing several new parties with Islamic identities to reinstate the "seven words" of the Jakarta Charter in the Amendment to the 1945 Constitution, which were divided into three categories, namely:

First, the party based on Islam, namely the Justice Party (PK); Ummah Awakening Party (PKU), Nahdlatul Ummah Unity Party (PNU), New Indonesia Party (PIB); United Development Party (PPP), and Crescent Star Party (PBB).

Second, a party that is based on Pancasila, but still considers the traditional Islamic constituency, namely the National Awakening Party (PKB)

Third, parties that have a special relationship with Muslims, but does not limit itself to Muslims and their unique interests, namely the National Mandate Party (PAN) and the Daulah Ummah Party (PDU).

### **Overview of Islamic law in Indonesia**

Islamic law is slowly but surely gradually becoming positive law in Indonesia and has placed it in an important position within certain limits. However, all this does not always run smoothly, especially since the government issued Law Number 8 of 1985 concerning the Community Organization Law, which requires political parties and community organizations to include a single principle, namely Pancasila, in their Articles of Association and Bylaws. The government believes that political parties based on Islam are seen as potential competitors to the state who could threaten the integrity of the nation and state because they oppose the state ideology of Pancasila. It is for these reasons that the New Order under President Soeharto's government, relations between Islam and the state experienced a very turbulent period of ups and downs. Soeharto tried to weaken and tame Islamic political forces, really suspected Islam as a potential force in competing with the existence of the state and intelligently through his policies, played with the religious emotions of Muslims, especially Muslims. In a situation like this, an antagonistic

relationship is created, namely a relationship between Islam and the government that is not harmonious, characterized by mutual hostility so that Islam is marginalized. This creates turmoil that is not conducive to relations between Islam and the state. The better the relationship between Islam and the state, the greater the opportunity for Islamic law to be applied as positive law in Indonesia, conversely, the more tenuous the relationship between Islam and the state, the smaller the opportunity for Islamic law to be applied as positive law in Indonesia.

The sources of Indonesian national law are sources of customary law, Islamic law and western law. These three sources of law experienced ups and downs to become national law. During the Dutch colonial period, western law was applied as the main source of law, followed by customary law. Islamic law can only be applied and implemented if it has been absorbed by local customs. Indonesia, with a majority Muslim population, the application of Islamic law as a source of law for legislation in Indonesia is not without problems. The main thing that happens most often is that these regulations cannot apply comprehensively nationally because of the diversity in Indonesia, and none of them are recognized as national religions in the 1945 Constitution of the Republic of Indonesia.

## **II. LITERATURE REVIEW**

The theoretical framework is used to identify legal theories, legal concepts, legal principles and legal norms which will be used as a basis for thinking regarding legal positions according to the theme and objectives of the research. The legal theory used as the basis for thinking in this research is:

1) John Rawls' Theory of Legal Justice. There are 2 principles of justice according to John Rawls. First, the principle of equal freedom (liberty for all), that every individual has equal rights to basic freedoms whose system is the same as freedom for all. Second, the principle of differences regarding socio-economics, namely the principle of social and economic inequality which is designed to provide the greatest benefits for disadvantaged parties. 2) Grand Theory from Thomas Aquinas. According to Thomas Aquinas there are four principles of justice. First, distributive justice (*justitia distributiva*) is justice relating to the distribution of positions, payment of taxes, etc. Second, legal justice (*justitia legalis*) is justice that concerns the implementation of the law, or general justice or justice according to the law in accordance with the *lex naturalis*. Third, commutative justice or exchange justice (*justitia commutativa*) is justice related to buying and selling transactions. Fourth, revenge justice (*justitia vindicativa*), namely justice related to criminal law.

### III. METHODOLOGY

The type of research chosen is normative juridical or empirical juridical and tries to formulate a way out of the statute approach as material for study and review of statutory regulations. Data Types and Sources

1. 1945 Constitution
2. Decree of the President of the Republic of Indonesia Number 1/PNPS of 1965 concerning Prevention of Abuse and/or Defamation of Religion
3. Law Number 5 of 1969 concerning Declaration of Various Presidential Decrees and Presidential Regulations as Laws
4. Law Number 14 of 1970 concerning Judicial Power, which recognizes the Religious Courts as one of the judicial bodies under the Supreme Court.
5. Law Number 1 of 1974 concerning Marriage.
6. Government Regulation Number 9 of 1975 concerning Guidelines for Implementing the Marriage Law.
7. Government Regulation Number 28 of 1977 concerning Waqfation of Owned Land.
8. The points for implementing Pancasila are outlined in MPR Decree No. II/MPR/1978 concerning Ekaprasetya Pancakarsa.
9. Law Number 7 of 1989 concerning Religious Justice
9. Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.
10. Law Number 4 of 1999 concerning the Implementation of the Specialties of the Aceh Regional Province.
11. Law Number 39 of 1999 concerning Human Rights.
12. Decree of the President of the Republic of Indonesia Number 6 of 2000 concerning the Revocation of Presidential Instruction Number 14 of 1967 concerning Chinese Religion, Beliefs and Customs.
13. Law Number 18 of 2001 concerning Special Autonomy for the Aceh Regional Province.
14. TAP MPR Number VII/ MPR 2001 concerning the Vision of Indonesia's Future.
15. Law Number 13 of 2003 concerning Employment.
16. Law Number 41 of 2004 concerning Waqf.
17. Law Number 3 of 2006 concerning Religious Courts.
18. Law Number 13 of 2008 concerning the Implementation of the Hajj Pilgrimage.

19. Law Number 19 of 2008 concerning State Sharia Securities.
20. Law Number 21 of 2008 concerning Sharia Banking.
21. Law Number 50 of 2009 concerning Religious Justice 21. Law Number 23 of 2011 concerning Zakat Management.
22. Criminal Code article 175.

Data collection technique for normative legal research, the data collection technique used is literature study.

#### **IV. RESULT AND DISCUSSION**

The legalization of Islamic law in Indonesia cannot currently be implemented because based on the facts in Indonesia, even though Muslims are the majority of the population in Indonesia +/- more than 86%, all of them do not have the same Islamic vision and mission and are still divided ideologically. The beginning of the founding of the Unitary State of the Republic of Indonesia was based on the pluralism of a pluralistic community; This diversity must be maintained so that there is no turmoil within the country.

Praise be to God Almighty, Indonesia can still survive as one intact country after almost 80 years of independence by relying on the sole principle/ideology of Pancasila as the basis of the state considering that state management is not very good with the level of diversity (multiculture). This extraordinary condition is also accompanied by very broad geographical conditions.

#### **V. CONCLUSION**

The symbiotic paradigm, which has been running well so far, despite experiencing ups and downs in the relationship and is about to be pushed/shifted towards an integralistic paradigm, should be carried out by representing Islam in a reasonable, proportional way, within one's capabilities and not revolutionary in accordance with Islam's potential in order to avoid negative reactions. both from within Islam itself and from non-Islamic circles, which in the end can be detrimental to the political interests of Islam itself.

It is necessary to uphold the rules of the game, culture and civilized values in conveying expression in order to avoid pollution in public spaces from hate speech and take advantage of freedom of expression in public spaces without injuring other people's rights.

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