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Islamic and State Relations Prevailing in Indonesia

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Abstract

Islamic nuanced law has officially become a positive law (lex positiva / ius constitutum) since the promulgation of Law Number 1 of 1974 concerning Marriage, which was later elaborated with Government Regulation Number 9 of 1975. The desire to compile the Book of Islamic Law in compiled form is felt increasingly urgent. The idea of compiling the Compilation of Islamic Law arose after two and a half years of the Supreme Court (MA). encouraged the Supreme Court to initiate the establishment of the Compilation of Islamic Law. The formulation of the Compilation of Islamic Law is intended as an effort to reform Islamic law in Indonesia in order to realize the certainty of Islamic law and so that Islamic law is relevant to the times in the context of Indonesia. The research method used in writing this journal is juridical-normative legal research which only emphasizes the study of documents, the legal sources used are laws and regulations, court decisions or decrees, contracts / agreements / contracts, legal theories and opinions of scholars. The purpose of writing this journal is to find out the extent of the relationship between Islam and the state that is influential in terms of social, cultural and historical factors that occur in Indonesia. The latest in this study is in the indicators that show that the strength of Islamic law has a great opportunity to be stronger in its development seen from the majority of the Indonesian population is Muslim and the weakness is the dynamic view of the community towards the massive implementation of Islamic law in Indonesia which is motivated by customs and culture that have grown since long ago.

Keywords*: Islamic Law, State Law, Indonesia*

I. INTRODUCTION

The enactment of Islamic law above affects the political thinking of national law which provides more open space for the implementation of Islamic law as positive law in Indonesia. This was marked by the promulgation of Law Number 14 of 1970 concerning the Provisions of the Main Provisions of Judicial Power. Article 10 paragraph (1) of this Law states that the judiciary is divided into four wards, namely the general court, religious court, military court, and state administrative court. [1]

[1] Law Number 14 of 1970 was further amended by Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning the Provisions of the Main Provisions of Judicial Power. Then this Law was amended again by Law Number 4 of 2004 concerning Judicial Power and amended again by Law Number 48 of 2009 concerning Judicial Power.

Islamic law has officially become a positive law (lex positiva / ius constitutum) since the promulgation of Law Number 1 of 1974 concerning Marriage, which was later elaborated with Government Regulation Number 9 of 1975. This law applies to all Indonesian people from various religions but the nuances of Islam are very thick, so it is not surprising that in the legislative process there is a political struggle marked by a tug-of-war between groups that are pro and con to the formulation of articles that are considered crucial and controversial as an influence of the spirit of de-Islamization of Islamic law on the one hand, and its formalization on the other.

In subsequent developments, Law Number 7 of 1989 concerning Religious Courts was promulgated.16 In fact, efforts to strengthen the position of Religious Courts have long been pioneered by the Ministry of Religious Affairs (now called the Ministry of Religious Affairs). Drafting activities on Religious Courts began in 1961, but concretely it was only carried out in 1971 based on Presidential Instruction Number 15 of 1970 concerning Procedures for Preparing Draft Laws and Draft Government Regulations. After a long discussion, the Law on Religious Courts was only promulgated on December 29, 1989.

Starting from this reality, the desire to compile the Book of Islamic Law in compiled form is felt increasingly urgent. The idea of drafting the Compilation of Islamic Law arose after two and a half years of the Supreme Court (MA) fostering the judicial technical field of religious courts. This coaching task is based on the Law. No. 14 of 1970 which specifies that the personnel, financial, and organizational arrangements of existing court courts are handed over to their respective departments, while the judicial technical arrangements are handled by the Supreme Court. Although the law was enacted in 1970, its implementation in religious courts was only possible in 1983 after the signing of a Joint Decree (SKB) by the Chief Justice and the Minister of Religious Affairs. The decree is a shortcut not to wait for the implementation of Law No. 14 of 1970 for religious courts. During that two-and-a-half-year journey, the Supreme Court found several things that needed to be addressed. Among them relate to the law applied in the religious court environment, namely Islamic law. There are a few things that are still a problem:

1. Islamic Law (*fiqh*) was spread in a number of books by jurists (*fuqaha'*) several centuries ago. It is almost certain that in every issue there is always found more than one opinion (*qaul*). It is natural to ask which Islamic law is it? For certain individuals or groups, maybe it doesn't need to be questioned because it is clear, considering that each has adopted a certain understanding. This is a reality without denying that the occurrence of differences of opinion is a blessing to the people. But the emphasis here is that in order to be enforceable in court, a rule, including

Islamic law, must be clear and the same for everyone. In other words, there must be legal certainty.

2. That the basis of the decision of the Religious Court is the books of fiqh. This opens up opportunities for dissent, or at least complaints, when the losing party questions the unfavorable use of the book/opinion by pointing to another book/opinion that offers a different solution. Even among the 13 standard books, some have rarely been used as references and there are often disputes between judges about the selection of the reference book. This is not the case in the General Court, because every decision of the Court is always stated as the opinion of the Court, even though a judge may agree with the opinion of the author of a book that may also influence the decision handed down.
3. Another point is that the fiqh used today was formed long before the birth of nationalism. At that time the practice of Islamic statehood still used the concept of ummah. Unlike nationalism, the concept of people unites various groups in society with religious ties. Nationalism was only born after World War I and Islamic countries also embraced it, including countries in the Arab world. Thus, a number of products and terms produced before the birth of nationalism can no longer be used due to differences in context.

The condition of Islamic law as described above is what then prompted the Supreme Court to initiate the establishment of the Compilation of Islamic Law.[2]

The formulation of the Compilation of Islamic Law is intended as an effort to reform Islamic law in Indonesia in order to realize the certainty of Islamic law and so that Islamic law is relevant to the times in the context of Indonesia, because the books of fiqh compiled by Islamic jurists several centuries ago which became references for judges in Religious Courts are believed to be unable to guarantee the realization of the two things above, for, as already mentioned, the books of Fiqh are in the form of commentaries containing the opinions of Islamic jurists with all their differences, and in general they were compiled at an age when Islamic law was stagnating due to the weak spirit of ijtihad among Muslims. Likewise, science that had a major influence on people's lives at that time was not as advanced as now, so the relevance of these fiqh books to contemporary life still needs to be questioned.

In subsequent developments, in line with the demands for reform and regional autonomy, the legal politics played by the Reform Order government increasingly opened opportunities for Islamic legal legislation both at the national and regional

[2] 9 Bustanul Arifin, Ideas and Objectives of the Compilation of Islamic Law. Paper, PTA East Java, 1995, 3-5.

levels which would certainly further strengthen the existence of Islamic law in Indonesia. Thus, Islamic law in addition to existing as a statutory provision also exists in the form of norms that regulate the behavior of Indonesian Muslims in daily life, both individual and social, as well as a form of practicing Islamic religious teachings that are believed to be true.

II. LITERATURE REVIEW

The author will try to associate this research with several previous scientific works, so that it will be related to the scientific work above. The scientific work that the author refers to is as follows:

1. Abdul Aziz Journal with the title; Islamic Sharia: A Long Polemic of Islamic and State Relations in Indonesia. This journal discusses the relationship between Islam and the State in Indonesia which is often a problematic relationship. Thus, under such circumstances, there is a need for various efforts for an integral understanding of Islam as a religion and politics in uniting a form of thought between the following two authorities.
2. Journal of Ali Ismail Shaleh and Fifiana Wisnaeni with the title; Religion and State Relations According to Pancasila and the 1945 Constitution of the Republic of Indonesia. This journal discusses the main idea of the relationship between religion and the state itself which is seen through the point of view of Pancasila and the 1945 Constitution. As with Pancasila as the basis of the Indonesian state, it raises a definite consequence, namely the law that moves must be based on the one and only god. The state has an important role in creating safe and harmonious conditions so as to create justice and order between religious communities in particular.
3. Journal of Nurwahidin, Muhammad Miqdad Nizam Fahmi, Jamaluddin Djunaid with the title; The Relationship between Islam and the State in the Perspective of Ali Abdurraziq's Secular Thought. This journal discusses the conception of Islamic thought and the difference between religious law and state law according to experts. This journal discusses using a sociological approach in looking at the views and thoughts of Ali Abdurraziq.

III. METHODOLOGY

The research method used in writing this journal is juridical-normative legal research which only emphasizes the study of documents, the legal sources used are laws and

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regulations, court decisions or decrees, contracts/agreements/contracts, legal theories and opinions of scholars.[3]

IV. RESULT AND DISCUSSION

A. Islamic Law that exists in Indonesia today

The history of the development of Islamic law in Indonesia cannot be separated from the history of the development of Islam itself. Islamic law is an important, if not the most important, part of Islam. Islamic law is the representation of Islamic thought, the most distinctive manifestation of the Islamic view of life and the essence of Islam itself.[4] Islamic law entered Indonesia at the same time as the entry of Islam in the country. There are three theories about the entry of Islam into the archipelago, namely the Gujarati theory (India), the Mecca theory (Arabic), and the Persian theory. These three theories try to provide answers about the problem of the entry of Islam into the archipelago regarding the time of its entry, the origin of the country that became an intermediary, or the source of taking Islamic teachings and the perpetrators of its dissemination.[5]

The first theory3 says that the beginning of the spread of Islam in Indonesia was in the 13th century A.D. The place of origin was Gujarat and the perpetrators were Indian traders who had embraced Islam. The second theory4 is more likely to say that its spread occurred in the 7th century A.D. In this theory there are two opinions about the origin of the country from which Islam entered. One opinion says, it originated in Gujarat, and another says, it came from the Middle East, namely Egypt and Mecca, and the perpetrators of the spread were Arab traders. The third theory5 argues that Islam that entered the archipelago came from Persia, stopped in Gujarat, and occurred in the 13th century.

The presentation of theories of the entry of Islam into Indonesia as mentioned above is not intended to repeat polemics on the issue, but simply to illustrate that Islamic law which is the most important part of Islam has long been known by the Indonesian people and has become a norm that governs their lives.

During the Islamic sultanate, Islamic law became an important reference in resolving legal cases that arose in the midst of society. The work of Nuruddin Ar-Raniri who lived in the 17th century in Aceh with the title Shirathul Mustaqim

[3] Ali Zainudin, "*Legal Research Methods*", 2009
[4] Joseph Schacht, an Introduction to Islamic Law, tr. Joko Supomo, Islamika, Yogyakarta, 2003, 1
[5] Ahmad Mansur Suryanegara, Discovering the History of Islamic Movement Discourse in Indonesia, Mizan, Bandung, 1995, 74

(The Straight Way) was the first book of Islamic law to be spread throughout Indonesia to become a reference for Muslim law. By Sheikh Arsyad Banjar who became a mufti in Banjarmasin, this book was expanded and extended its description and used as a reference in resolving disputes between Muslims in the Banjar sultanate area. In the sultanate areas of Palembang and Banten, several books of Islamic law were also published as normative references in resolving legal cases that occurred. Islamic law was also enforced in the kingdoms of Demak, Jepara, Tuban, Gersik, Ampel, and Mataram. Thus, it can be understood that before the Dutch established their power in Indonesia, Islamic law already had its own position in society. As a stand-alone law, Islamic law has existed and prevailed in the lives of Indonesian people, growing and developing in addition to customary law.[6]

During the Dutch colonial period, the development of Islamic law in Indonesia can be seen in two forms. First, there was tolerance on the part of the Dutch through the VOC which provided a rather wide space for the development of Islamic law; it can even be said that the VOC helped compile a Compendium containing marriage law and Islamic inheritance law and applicable among Muslims. Second, there was an attempt to intervene in Islamic law by exposing it to customary law.[7]

The above statement describes the ups and downs of Dutch legal politics towards Islamic law as an influence of theories that emerged at that time, such as the theory of Receptie in Complexu. This theory was initiated by Solomon Keyzer which was later corroborated by Christian Van den Berg (1845-1927). According to this theory, the law follows the religion of a person. If the person converts to Islam, then Islamic law applies to him.[8]

In his book Muhammadansch Recht, Van Den Berg stated that Islamic law was necessary for bumiputra Muslims albeit with slight deviations. It was this theory that influenced the VOC's accommodating attitude towards Islamic law so that they did not see it as a threat to be feared. And based on this theory, Van den Berg proposed that a Religious Court be established in Indonesia. This proposal was

[6] Muhamad Daud Ali, "Islamic Law, the Judiciary and Its Problems", in Islamic Law in Indonesia, Thought and Practice, PT. Remaja Rosda Karya, Bandung,1991, 70

[7] Ratno Lukito, The Struggle Between Islamic Law and Customary Law in Indonesia, INIS, Jakarta, 1998), 28.

[8] Ichtijanto, "Development of the Theory of the Enactment of Islamic Law in Indonesia", in Tjun Suryaman (ed.), Islamic Law in Indonesia: Development and Formation, Rosda Karya, Bandung, 1991, 123.

responded by the colonial government with the issuance of Stbl.1882 No.152 which was enforced in Java and Madura. Judges working in the Religious Courts were recruited from the ruler who also advised Landraad in resolving cases.[9]

Such an accommodating attitude did not last long because the Dutch colonial government was influenced by the Receptie theory developed by Chrestian Snouck Hurgronje (1857-1936), which was further systemized scientifically by Van Vollen Hoven and Ter Harr. This theory is based on the results of research conducted by Hurgronje in Aceh. According to him, what applies and affects the majority of Acehnese Muslims is not Islamic law. And Islamic law only has legal force if it has been truly accepted by customary law. Thus, it is customary law that determines the validity and invalidity of Islamic law.[10]

As a result of this theory, the development of Islamic law was hampered because the Dutch colonial government issued a new policy limiting the authority of religious courts by issuing Stbl. 1937 Nos. 116 and 610. Receptie's theory was quite influential in Indonesia until the 1970s. However, after Indonesia became independent and Constitution 45 became the basis of the state, even without containing seven words in the Jakarta Charter, the Receptie theory above was declared invalid and lost its legal basis. Furthermore, Islamic law applies to Indonesians who are Muslims in accordance with the provisions of article 29 of the 45th Constitution.

The definition of "already existing" Islamic law above is:[11]

1. Islamic law is an integral part of national law;
2. By its independence and power of authority, Islamic law is recognized by national law and given the status of national law;
3. Islamic legal norms serve as filters for national legal materials and;
4. Islamic law as the main material and main source of national law.

Indonesia is an archipelagic country whose population is very plural in terms of ethnicity, culture, and religion. The majority of the population is Muslim. Indonesia was colonized by the Dutch for approximately 350 years, a long time. In addition, Indonesia has also been colonized by the Spanish, Portuguese, British, and Japanese in a not too long time compared to the Dutch colonial period. Judging from the plurality of the population and its historical experience as a colony, it is very natural that in Indonesia there is also a plurality of legal systems.

[9] Abdul Manan, Islamic Law Reform in Indonesia, PT. RajaGrafindo Persada, Jakarta, 2006, 2.
[10] Muhammad Daud Ali, Islamic Law, 72
[11] Mahsun Fuad, Indonesian Islamic Law, LKiS, Yogyakarta, 2005, 56.

In our country there are three legal systems, namely customary law, Islamic law, and Western law. These consecutive mentions are based on the age of validity in Indonesia. Customary law is the oldest law in our country compared to other laws. Since 1927, customary law began to be carefully studied and observed in the context of implementing the legal politics of the Dutch government after the confirmation of the theory of receptie in the regulations in force at that time.

Islamic law has only been known in Indonesia since Islam was spread in the country. In line with the rapid spread of Islam, Islamic law is increasingly known and rooted in the lives of Indonesian Muslims. As a law derived from religion, Islamic law will experience political problems when formalized its practice in this very pluralistic Indonesian state, because Islamic law cannot be separated from Islam itself. And if it is included in the level of state ideology, political problems will arise. Moreover, the religion of Islam with its very comprehensive teachings can be understood as a religion and state / politics (al-Islam din wa daulah).

Historical experience shows that the tug-of-war of interests between religious groups has reached its climax in the debate over the formulation of the constitution and constitution of the Republic of Indonesia which ultimately led to a political compromise to maintain the unity and unity of the Indonesian nation. Indonesia is constitutionally not an Islamic state but it is not a secular state that views religion as a private matter and is completely independent of the state. A middle way has been reached by the Indonesian people to overcome the ideological turmoil of the idea of a country that wants to recognize a particular religion and be positive and accommodating towards other religions.

On the relationship between religion and state, the theorists of fiqh siyasi (political Islam) formulated several theories. The theory can be distinguished in three paradigms:[12]

1. Integralistic paradigm, stating that religion and state are integral. The area of religion includes politics or the state. The state is a political and religious institution at the same time, therefore a head of state is the holder of political and religious power at the same time. According to this paradigm, government is organized on the basis of God's sovereignty because in fact sovereignty comes from God Himself.
2. Secularistic paradigm, this paradigm emphasizes the separation between religion and state. Both have their own work areas that do not need to intervene with each other. Religion is religion and state is state.

[12] See Kamaruzzaman, Relations between Islam and State, Indonesia Tera, Magelang, 2001, 129

3. Symbiotic Mutual Paradigm. According to this paradigm, the relationship between religion and state is mutually symbiotic, meaning that they need each other. In this case religion needs a state, because with the power of the state religion can develop. Likewise, the state needs religion, because with religion, the state can develop with the ethical and moral guidance of religion.

The paradigm of religion and state relations adopted in Indonesia is the last one, namely the symbiotic mutual paradigm. The state has the basis of the state of Pancasila. The first precept is the One True Godhead. This precept shows that religion in Indonesia has a strategic and very important position which means that all Indonesian citizens must embrace a certain religion and be guaranteed freedom in choosing and practicing their religion. Although Indonesia is not a religious state, the position of religion in the life of the nation and state is a very fundamental moral reference, and even the first precept of Pancasila underlies other precepts, namely Just and Civilized Humanity, Indonesian Unity, Peoplehood Led by Wisdom in Representative Consultation and Justice for All Indonesian People. Furthermore, Article 29 paragraph (2) of Constitution 45 on Religion affirms that the state guarantees the freedom of each citizen to profess his own religion and to worship according to his religion and belief. Islamic law is an important part of Islam, therefore the practice of Islamic law by Muslims is a form of practicing religious teachings as well as the rights of the people who must obtain protection from the state as affirmed in Article 28A to Article 28J of the Constitution 45.

Muslims in Indonesia are quantitatively the majority which means that the composition of the country's population is mostly Muslim. The logical consequence of this social reality is that the aspiration of the majority of the Indonesian population is to want the application of Islamic law in their lives as a law derived from a religion whose truth is beyond doubt, so it is natural that Islamic law becomes a reference as a very important national legal material that must be referred to in national legal legislation, because according to the sociological theory of jurisprudence proposed by Eugen Ehrlich that good law (ideal) It is a law whose basis for its formation comes from and corresponds to the legal reality in society[13]

[13] Lili Rasyidi &; Ira Rasyidi, Basic Basis of Philosophy and Legal Theory, PT Citra Aditya Bakti, Bandung, 2001, 66.

This legal reality is called living law and Just law which are key words in his theory. A law can be called a living law in society if it applies juridically, sociologically and philosophically.[14]

Although Islamic law has become a living law in Indonesian society, its formalization as a law requires further political support. Since the rolling of the Reformation Order, the government's legal political constellation has undergone a very significant change from before in the New Order era which tended to castrate people's rights. This new momentum allows the aspirations of Muslims who want the formalization of Islamic law in the life of the nation and state to increasingly get open space. This reality does not only occur in Indonesia and in this contemporary era, but has become a reality in various parts of the world and has been happening for a long time. In this context, Muhammad Khalid Masud stated that the demand to apply Islamic law (shari'ah) as the law of the land has been the subject of debate for almost two centuries. The intensity of the debate increased in the twentieth century during the process of state formation in the Islamic world. More recently the migration of Muslim peoples has brought this debate to the continents of Europe, North America and South America.

The legal politics of the Reformation Order government seemed more accommodating to the aspirations of Muslims, in line with the spirit of reform that demanded freedom and guaranteed the rights of the people in general. Indicators that show that the government's legal politics are more accommodating are the increasing number of Islamic legislation in the reform era,30 for example the promulgation of Law Number 17 of 1999 concerning the Implementation of Hajj, Law Number 36 of 1999 concerning Zakat Management, Law Number 44 of 1999 concerning the Implementation of the Privileges of the Special Region of Aceh, Law Number 41 of 2004 concerning Waqf, Law Number 19 of 2008 concerning State Sharia Securities, Law Number 21 of 2008 concerning Sharia Banking, Supreme Court Regulation of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law and others.

The enactment of Islamic laws and regulations above shows that Islamic law has become an integral part of national law. With its independence and power of authority, Islamic law is recognized for its existence by the National legal system and given the status of National law. Islamic legal norms serve as a filter material of National law even Islamic law is recognized as the main material and main

[14] Soerjono Soekanto &Mustafa Abdullah, Sociology of Law in Society, Rajawali, Jakarta, 1987, 13-14

source of National law. In the current reform era, the existence of Islamic law is recognized as having its own power whose form can be actualized in the form of legislation, jurisprudence and legal awareness of Indonesian society (comprehensive theory of existence).

In addition to the customary law system and Islamic law as explained above, Western law also applies in Indonesia. Indonesia as a Dutch colony for a long period of time is natural if the legal system is also influenced by the Dutch legal system (civil law). Until now, there are still many Dutch laws in force in Indonesia. Efforts to realize a national law that affects Indonesia until now have been very minimal, and still more as a political rhetoric. This means that the Indonesian nation, which has been independent for more than half a century, has not been able to establish its identity from a legal aspect. It is a difficult task for our legal experts to be able to reform the laws left by the colonialists that are not in accordance with the values and character and culture of the Indonesian nation.

The three legal systems mentioned above, namely the customary law system, the Islamic legal system and the Western legal system since the beginning of their existence in Indonesia have competed with each other in maintaining their existence in our country and the final momentum of the competition is largely determined by the political interests of the ruling government which is certainly different in each order of government, And that rivalry is still ongoing today and perhaps until the end of time. Although the three legal systems compete with each other, between the three there are intersections, especially Islamic law which has an inclusive and accommodating character, for example with its doctrine that adat / adat can be used as a source of law as long as the custom / custom does not conflict with the principles of Islamic teachings.[15]

B. Islamic Law Provides Prospects for Indonesia

A state, wherever and whenever it exists, is certain to require rules of law that regulate, limit and protect the human rights of its citizens and to ensure the continuity of balance in relations between members of society conducted at the will and conviction of each citizen himself. [16]Even the progress and decline of a country can be seen from the extent to which the laws in force in the country are enforced and obeyed by its citizens.

[15] Jazuni, Islamic Law Legislation in Indonesia, PT. Citra Aditya Bakti, Bandung, 2005, 238
[16] C.S.T. Kansil, SH. Introduction to Indonesian Law and Legal Procedure, Jakarta, Balai Pustaka, 1992, p. 13

Likewise in the modern state system, the term for a country that grows and develops today2, or a country that puts technology or engineering3 first in developing and advancing its country, which is identified with Western countries or any country whose state system adheres to and imitates the Western system although not everything that comes from the West is modern, but requires the rule of law to ensure the establishment of the country. Countries whose legal tools are fragile will certainly be quickly destroyed, even though they have high capabilities in the field of technology.

Among the laws that develop in the world are laws based on religious norms. Actually, since a long time ago, religious norms have always violated the laws in a country. Thus, Ibn Taymiyyah argued that religion was closely intertwined with the state; Without coercive state power, religion is in danger and without the discipline of revelation law, the state must be a tyrannical organization.[17]

Islamic law is one of the religious norms, of the many religious norms that exist in the world. Admittedly, scholars are quite diverse in providing an understanding of Islamic law. This is understandable, because the word Islamic law is not found at all in the Qur'an and legal literature in Islam. What is in the Qur'an is the word suriat, fiqh, the law of Allah and its roots. The word Islamic law is a translation of the term "Islamic Law" from Western literature.[18]

Looking objectively at the strengths, weaknesses, opportunities and challenges/threats of Islamic law. The strength of Islamic law in Indonesia includes:

1. Support of Muslims who quantitatively constitute the majority group from a religious aspect. The support of Muslims will elaborate in the form of strong legal aspirations of Muslims in influencing the legislative process significantly. And their legal aspirations must certainly be taken seriously by parliament or the government. In the current reform era, Muslims have begun to feel free to voice their aspirations to demand the enactment of Islamic law, or at least, Islamic legal discourses have increasingly surfaced at the public level. For Muslims there is no choice but to believe that practicing Islamic law in their daily lives means practicing the teachings of Islam itself totally.
2. Islamic law has a substantially dynamic, elastic and flexible character supported by its principles and principles. Although Islamic law has its

[17] Khalid Ibrahim Jindan, Religious Studies: Normatitivity or History?, Yogyakarta, Pustaka Pelajar , 1996, p. 168: Student Library, 19996, p. 168

[18] Fathurrohman Djamil, Philosophy of Islamic Law, (Part One), Jakarta, Logis Wacana Ilmu, 1997, p. 11

origins in the Qur'an and al-Sunnah and was first revealed in the Arabian Peninsula, because Islam is a universal religion, the laws it contains are believed to always be relevant and in accordance with the needs of mankind everywhere in this hemisphere. In the Qur'an and al-Sunnah there are provisions that are partly permanent and eternal and some are possible to change and can adapt to the demands of the place, age and environment all of which can be known through the activity of ijtihad. In the Indonesian context, it is possible to design fiqh with Indonesian style.

3. Islamic law comes from the revelation of Allah who knows the needs of mankind. Therefore, we believe that the provisions of God's law are perfect and effective and can guarantee the justice needed by man than man-made laws. Islamic law is not only projected for life on earth but also for life in the Hereafter. Empirical evidence shows that the enactment of Islamic law (Islamic penal code) in Saudi Arabia is effective and can reduce crime rates to a very low point. Freda Adler, a professor from Uncle Sam's country included this country as one of the ten countries with the title of the smallest country crime rate compared to other countries in the world. Likewise, the results of research by Souryal, a professor of the criminal justice system from Sam Houston State University, Texas, United States, show the same empirical fact that Saudi Arabia is the country with the lowest crime rate compared to other countries that do not apply Islamic law.

Islamic law in addition to having the strengths as mentioned above also has weaknesses in a nonsubstantive sense, including:

1. Islamic law, although supported by Muslims who are the largest group in our country but most of them are still relatively unfamiliar with Islamic law. Legal scholars in our country, despite being Muslim, do not understand much of the substance of Islamic law and its philosophy. They study more Western legal theory which has different principles and principles and philosophies, especially in most general law faculties Islamic law courses are taught only as a complement not the main course. This is an irony of the quantitative greatness of Muslims in Indonesia
2. Islamic law in Indonesia is spread in classical books mostly written by Middle Eastern scholars. And not infrequently the formulations are still debates or schools that are very varied and even contradictory. So in order for Islamic law to be worthy of becoming a rule of law, it takes hard and serious work from Islamic legal theorists to be able to formulate it in such a way that legal

certainty can be produced according to the sense of justice of the Indonesian people.

The opportunities for Islamic law to exist in our country can be described as follows:

1. Indonesia has the foundation of the state of Pancasila. The first precept of the Supreme Godhead. These precepts became the fundamental foundation for the existence of Islam and the laws that accompany it. From this first precept, Article 29 paragraph (2) of Constitution 45 concerning religion and Article 28A to Article 28J of Constitution 45 concerning human rights are further derived. All these provisions guarantee the practice of religion by every citizen including the application of religious law and that it is a human right that must be protected by the state.
2. The implementation of regional autonomy in Indonesia opens up space for bottom-up distribution of people's legal aspirations at the local level so that it is possible to emerge local regulations with Islamic nuances according to community needs.
3. In this latest development, there is a dynamic in society that shows that a Shari'ah-based thing is increasingly marketable. For example, shari'ah banking, shari'ah insurance, shari'ah pawns, shari'ah MLM, shari'ah hospitals, shari'ah supermarkets and others, so it is not surprising that shari'ah services appear everywhere and are even used as advertising content. This phenomenon certainly provides a good opportunity for Islamic law to exist in people's lives.

In addition to the opportunities mentioned above, Islamic law is also faced with challenges or threats that are not light, including:

1. Understandings or ideologies that influence the way of thought of some people who emphasize freedom and defense of human rights (HAM) whose philosophical basis is contrary to religious teachings. This challenge or threat will be severe when it comes to the implementation of Islamic criminal law which has been stigmatized as inhumane, barbarian, sadistic and old-fashioned.
2. Jealousy from non-Islamic groups who do not understand the national legal system and the position of Islam in the system of life of the nation and state, especially those who fear the emergence of Islamization in all aspects of life and the shift of Indonesia from a Pancasila state to an Islamic state that will make them a marginal group on this Indonesian earth.

In general, law among others serves to control society and can also be a means to make changes in society15. Thus, law cannot be separated from the life and development of society. While the function in Islam cannot be separated from its understanding and characteristics as discussed above, and there are quite a lot of them, including:[19]

a. The function of worship, namely Islamic law, is the teaching of God that must be obeyed by mankind, obedience is worship which is also an indication of one's faith.
b. The function of amar ma'ruf nahi mungkar. In other words, Islamic law is a social control for the safety of individuals and the surrounding community so that humans carry out good and avoid evil, so that the purpose of Islamic law (maqasshid al-shari'ah) can be achieved, which is to bring benefit and avoid madharatan (jalbu al-mashalih wa daf'u al-mafaasid) both in the life of the world and later in the hereafter.
c. The function of Zawajh (giving ta'zir). This function strongly reflects that Islamic law as a means of coercion that protects citizens from all forms of threats and harmful acts. This function can also realize the objectives of Islamic law.
d. The function of Ta'zhin wal Islhlah al-Ummah is as a means to manage as well as possible and expedite the process of social interaction so as to realize a harmonious society in security and welfare, tayyibatun wa rabbun ghafur.

The four functions above are closely related to each other. Thus, either directly or indirectly the four functions affect each other. It should also be noted that in Islamic law there is a certain emphasis between person and deed. The personal aspect theoretically academic is more dominant in the Islamic civil field and attaches great importance to the pleasure of both parties, the aspect of action (af'al) is more dominant in the Islamic criminal field, the nature of the pleasure of both parties is strongly avoided. So even adultery, even if committed consensually, is still prohibited and must be punished.

Truth in Islamic law, not only focused on the origin and rule of Islamic law itself, but in the process and application of Islamic law must also be upheld by upholding the principles of truth. No wonder Islam forbids perjury, slander, bribery, etc. that would tarnish Islamic law itself. So that if Islamic law is really enforced, it will be able to ensure the safety and benefit of human life anywhere and anytime. In addition, in order for Islamic law to remain upholding its principle of truth, Islamic

[19] Satjipto Rahardjo, Legal Science, Bandung, PT. Aditya Bhakti, 1995, p. 189

law does not prioritize salabiy (prohibition of carrying out maland), but prioritizes ijaby (exhortation to uphold goodness), as mentioned above. Even in Islamic law there is the principle of taujih wa tasyri' (direction and guidance), so it is expected that humans are always in the truth and do not violate the rules that have been established in Islamic law.

One of the purposes of law enforcement is to ensure legal certainty in society. But the law cannot be upheld if it is not jointed with justice. Thus, justice is one of the main things that are needed in human life in the world. If justice has been established, then the peace and welfare that is the dream of every human being will certainly be achieved. Islamic law is a law that prioritizes justice, even in the Quran the concept of justice is not only obtained from the root adl but also from the root words qisth, hukm, 'aqd, and others, which in general the meaning of the root word, according to Abdurrahman Wahid is something right, an impartial attitude, safeguarding one's rights and a way that is directly related to justice. It also illustrates that justice gets a "special portion" in the Quran. No wonder, then, that the mu'tajilah and Shi'a groups place 'is' (justice) as one of its main principles in al-Mabda al-Khamsah.

Islamic law pays great attention to the principles of humanity and human benefit. It is true from the perspective of zhahir that Islamic law seems cruel, like the commandment of qishah, whether in the form of death penalty or cutting off hands. However, it contains deep meaning and wisdom both for himself and especially a warning for others. So that other people really feel afraid and don't want to commit theft. In other words, the punishment is shock therapy for others. It is very effective in enforcing the law and ensuring human safety. Everyone will not underestimate the law he will receive if he commits a violation. All agree that effectiveness is paramount in modern times. Islamic law also contains ethical and moralist aspects. Many examples can strengthen this statement for example: In giving qishah is very concerned about the health of the person to be punished; Islam forbids a woman to be alone with a man who is not her muhrim because doing so would result in a reprehensible, inappropriate act—adultery like an animal—committed by a moral person; Islamic law forbids women to wear clothes that indulge men's shahwat, because doing so would lead to slander and is not in accordance with the ethics that a human being should do: etc. No less important, it turns out that Islamic law pays great attention to the laws that apply in a region or country (al-Siayasah wa al-ta'jir). Thus, state law highly values the application of Islamic law adapted to the conditions in which Islamic law is applied.

Islamic law will be beneficial and urgent for those who are willing to accept it with full responsibility and awareness, and feel that human beings were created to serve Him, both living in the ancient state system and in the modern state system. Because, Islamic law contains principles that are in accordance with human nature wherever and whenever they are. Prosperity, happiness, security, order, justice, etc. will be achieved by those who are willing to apply and obey Islamic law, both in this world and in the Hereafter. Nevertheless, man remains.

In general, law aims to ensure legal certainty in a society based on justice. The broader objectives put forward by several legal experts, as quoted by Drs. C.S.T. Kansil, S.H. it can be concluded that the objectives are as follows[20]:

a. To serve the country which in essence is: bring prosperity.
b. To organize peaceful social life. The law requires peace.
c. Aim solely to achieve justice. And as an element of justice is "the interest of usefulness and expediency".
d. To safeguard the interests of every human being so that their interests cannot be interfered with.

From some of the above objectives, it can be concluded that the purpose of law is to achieve benefit. Human peace, balance and well-being. If the law has been established, in the sense that it is obeyed by all societies and the guilty are punished accordingly with their actions without discriminating class and class in accordance with the provisions, then human rights are automatically guaranteed. The above objectives of law are the same and in line with the objectives of Islamic law. In Islamic shari'ah it has been affirmed that the purpose of Islamic law is to safeguard religion, soul, descent / honor, reason, and property. These five things are human needs. Thus, in short, Islamic law aims to establish society and compassion in the universe.

[20] C.S.T. Kansil, SH. Introduction to Indonesian Law and Legal Procedure, Jakarta, Balai Pustaka, 1992, p. 13

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V. CONCLUSION

Considering the strengths and opportunities of Islamic law in Indonesia by comparing it to the weaknesses and challenges or threats it faces, it can be concluded that Islamic law has hopeful prospects in Indonesia, even with a note. The conclusion was supported by the following analysis:

1. The strength of Islamic law and the opportunities it has in Indonesia are very significant in determining the prospects of Islamic law because those strengths and opportunities are based on the support of Muslims who are quantitatively majority, and the ideological foundation of the constitution is very fundamental.
2. The weaknesses and challenges/threats faced by Islamic law in Indonesia are only perceptual, not fundamental. People's perception of Islamic law will always be dynamic with the level of knowledge, religious awareness and cultural development of the nation.

However, the note that needs to be put forward in this context is that if Islamic law is about Islamic criminal law, its enactment in Indonesia still requires a struggle that is not light. There are several obstacles that confront, among others:

a. Cultural or sociological constraints, namely the existence of some Muslims who have not been able to accept the implementation of Islamic criminal law because of the gap in cultural and sociological values that occur in Indonesia.
b. Ideological constraints include many negative views of Islamic penal code and doubts about the effectiveness of its application.
c. Philosophical obstacles, in the form of accusations that Islamic criminal law is unjust, even cruel, outdated and contrary to the ideals of national law.
d. Juridical constraints, reflected in the absence of positive criminal law provisions derived from Islamic law.
e. Academic constraints, as seen from the lack of widespread study of Islamic criminal law in schools or universities.
f. Structural constraints are evident from the absence of a legal structure that can support the application of Islamic criminal law.
g. The constraints of scientific references are reflected in the lack of scientific literature that examines Islamic criminal law philosophically.
h. Political constraints can be seen from the inadequacy of the political power of Muslims to pass the enactment of Islamic criminal law through the process.

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