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The Legal Politics of Waqf Regulation in Indonesia

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Abstract

This paper examines the dynamics of the changes in the regulation of waqf (Islamic endowment) in the context of legal politics in Indonesia. Waqf, as a religiously-based financial and social instrument, plays a significant role in building community welfare. This research explores how the regulation of waqf has evolved in conjunction with political developments in Indonesia. Through historical and contextual analysis, the paper discusses the political, legal, and social factors influencing the transformation of waqf regulations. The method used in this research is normative, also known as doctrinal legal research. Aditionally, qualitative approach is also used alongside.. The study outlines policy changes related to waqf from the colonial era to the contemporary period (post-reform era after 1998). In conducting this analysis, the focus is on the political dynamics shaping and altering the legal framework and policies related to waqf. Additionally, the impact of these changes on the implementation and benefits of waqf for the community is also a focal point of attention. The results of this research provide in-depth insights into how waqf, as a financial and social instrument, adapts to political changes in Indonesia. The implications of these findings can offer guidance for policymakers, practitioners, and academics to understand the role of waqf in the context of political dynamics and contribute to the sustainable socio-economic development of communities.

Keywords: *Legal Politics, Politic Configuration, Waqf Arrangements*

I. INTRODUCTION

Waqf initially was merely the desire of an individual who wished to do good with their wealth and managed it individually without any specific regulations. However, after the Islamic community experienced the benefits of the waqf institution, there arose a desire to regulate endowments properly. Subsequently, institutions were established to regulate waqf, managing, preserving, and utilizing waqf assets, whether in a general context such as mosques or on an individual or family basis.

In waqf, the essence lies in the benefits received by the party designated by the *waqif* (donor) at the time of the waqf pledge, or the functioning of waqf assets in accordance with the intended purposes of waqf. These purposes extend beyond worshiping Allah, including social, missionary, and economic interests such as providing public facilities, supporting worship, missionary activities, education, and healthcare. It also includes assistance to the poor, orphans, development of human resources through

scholarships, capital assistance, job creation, poverty reduction, economic empowerment, and alleviating the state budget burden.

Unfortunately, according to data from the official website of the Ministry of State Secretariat of the Republic of Indonesia, the literacy of the Indonesia's citizens related to Waqf is relatively low, at 50.48%, compared to Zakat, which is 66.78%.[1] As confirmed on the website of the Indonesian Waqf Board, the Value of Waqf Literacy Index (ILW) of 50.48% is indeed considered low. It consists of a Basic Waqf Literacy Understanding Value of 57.67% and an Advanced Waqf Literacy Understanding Value of 37.97%.[2]

On October 27, 2004, the government issued a new regulation, namely Law Number 41 of 2004 concerning Waqf (*Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf*). This law specifically regulates waqf. With the enactment of this law, all regulations regarding waqf remain valid as long as they are not contradictory and/or have not been replaced by new regulations based on this law. It can be said that the legal politics governing waqf still applies all provisions related to waqf and does not repeal the provisions of waqf regulations that existed before October 27, 2024. This is not unrelated to the political interests of the authorities. In line with Azizy, according to Mahfud MD (1999: 71), legal facts emerge as a reflection of the political configuration underlying them.

According to Mahfud MD (2010; 1), legal politics are "legal policy or the official guidelines regarding laws to be enacted, whether through the creation of new laws or the replacement of old laws, in order to achieve the goals of the state." Thus, legal politics are choices about laws to be enacted as well as choices about laws to be repealed or not enforced, all of which are intended to achieve the goals of the state as stated in the Preamble of the 1945 Constitution.

Definitions put forth by other experts show substantive similarities to the definition presented by the author. Padmo Wahjono states that legal politics are the basic policies determining the direction, form, and content of the laws to be formulated. In another piece, Padmo Wahjono clarifies this definition by stating that legal politics are the state's organizing policies regarding what criteria are used to punish something, which includes the formation, application, and enforcement of laws. Teuku Mohammad

[1] "Tingkatkan Literasi Wakaf dengan Lima Rencana Aksi," *Kementerian Sekretariat Negara Republik Indonesia* (blog), September 14, 2020, https://www.setneg.go.id/baca/index/tingkatkan_literasi_wakaf_dengan_lima_rencana_aksi.

[2] "Laporan Hasil Survey Indeks Literasi Wakaf Nasional Tahun 2020," *Badan Wakaf Indonesia* (blog), May 20, 2020, https://www.bwi.go.id/4849/2020/05/20/laporan-hasil-survey-indeks-literasi-wakaf-nasional-tahun-2020/.

Radhie defines legal politics as a statement of the state ruler's will regarding the laws applicable in its territory and the direction of legal development to be built.
Satjipto Rahardjo defines legal politics as the activity of choosing and the means intended to achieve a social goal with specific laws in society, covering answers to fundamental questions, namely: (1) what goals are to be achieved through the existing system, (2) what ways and which ones are considered the best to use in achieving those goals, (3) when and how the law needs to be changed, and (4) can a fixed and established pattern be formulated to help decide the process of choosing goals and ways to achieve those goals effectively.
Former Chairman of the Criminal Code Drafting Team (well-known as 'KUHP'), Soedarto, states that legal politics are the state's policy through authorized state bodies to establish desired regulations that are expected to be used to express what is contained in society and to achieve aspirations. In 1986, Soedarto reiterated that legal politics are an effort to realize good regulations in accordance with the conditions and situations at a given time.
From the formulation of the definition of legal politics, it can be concluded that legal politics includes at least three things: (1) State policies (official guidelines) on laws to be enacted or not enforced in order to achieve the goals of the state, and (2) political, economic, social, cultural backgrounds (poleksosbud), the birth of legal products. Based on the description above, the proposed problem formulation to be presented by the author is as follows: (1) What is the legal politics of waqf in Indonesia? (2) What is the background politics behind the enactment of the Waqf Law in Indonesia?

II. METHODOLOGY

The method used in this research is normative, also known as doctrinal legal research. Soerjono Soekanto and Sri Mamudji opine that normative legal research is conducted by examining literary materials (secondary data) that include: (1) Research on legal principles, namely research on legal elements, both ideal elements (normwissenschaft/sollenwissenschaft) that result in specific legal provisions (written); (2) Research on legal systematics, which involves identifying fundamental concepts in law such as legal subjects, rights and obligations, legal events in legislation; (3) Research on vertical and horizontal synchronization levels, which entails examining the compatibility of positive law (legislation) to avoid contradictions based on the hierarchy of legislation (stufenbau theory); (4) Legal comparison, which involves building general knowledge about positive law by comparing legal systems in one country with those in other countries; (5) Legal history, which involves studying

the development of positive law (legislation) over a certain period (e.g., land law, marriage law, corporate taxation, etc.).[3]

Because what the author will investigate aligns with the definition provided by Soerjono Soekanto and Sri Mamudji above, namely related to examining the development of waqf regulations in Indonesia, the author chooses the normative or doctrinal method in this research.

Additionally, qualitative approach is also used alongside, which is often used to delve deeper into social phenomena, including fields such as law, public policy, education, management, business administration, or development. Essentially, qualitative research methods are aimed at studying cases through observation. Therefore, the process of data collection and analysis is also case-oriented. Qualitative findings are directed towards improving the quality of work and can also be beneficial for academic purposes.[4]

III. RESULT AND DISCUSSION

A. The Definition of Political Law

Etimologically, the term "politik hukum" is the Indonesian translation of the Dutch term "*rechtspolitiek*," which is a compound of two words, "*rech*" and "*politiek*." In Indonesian, the word "*recht*" means "*hukum*" (law). The term law itself originates from the Arabic language, specifically "*hukm*" (plural: *ahkam*), which means decisions, determinations, commands, authority, punishment, and so on. In connection with this term, there is no unanimous agreement among legal theorists about the exact definition and meaning of law. Differences in opinions arise due to its abstract nature and extensive scope, as well as varying perspectives among experts in understanding what is referred to as the law. However, as a guideline, it can be simply stated that law is a set of behavioral rules that apply in society.

Law is considered the objective of politics, as legal ideas such as legal concepts like freedom, justice, certainty, and others are placed in positive law. The implementation, either in part or as a whole, of these legal ideas is the goal of both the political and legal processes, and law serves as a tool of politics. Politics utilizes positive law (legislation) to achieve its goals, meaning to realize these legal ideas. Politics can direct and shape society towards achieving social problems, where politics is a

[3] Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*, 3rd ed. (Jakarta: Kencana, 2020), 129.

[4] Rully Indrawan and Poppy Yaniawati, *Metode Penelitian Kuantitatif, Kualitatif, dan Campuran: Untuk Manajemen, Pembangunan, dan Pendidikan* (Bandung: Refika Aditama, 2017), 67–68.

dynamic aspect, and law is a static aspect. Politics and law form the basis of legal politics with the provision that the implementation of legal political development cannot be separated from the implementation of political development as a whole. In other words, the basic principles used as provisions for political development will also apply to the implementation of legal politics manifested through legislation.[5]

Padmo Wahjono (in Isharyanto, 2016:1) defines legal politics as the basic policy that determines the direction, form, and content of the laws to be formulated. This definition is still abstract and is later complemented with an article titled "Menyelsik Proses Terbentuknya Perundang-undangan," stating that legal politics is the state's organizing policy on what criteria are used to punish something. In this context, this policy can be related to the formation, application, and enforcement of laws. Legislation is a part or subsystem of the legal system. Therefore, discussing legislative politics essentially cannot be separated from discussing legal politics. The terms legal politics or legislative politics are based on the principle that law and/or legislation fundamentally constitute a design or result of the political body.[6] This is in line with what Iswantoro conveyed in his article titled "Politik Hukum Pembenukan dan Peraturan Perundang-Undangan," stating that legislation, in its formation, is influenced by the direction of political policy. The configuration between politics and law produces a direction for the formation of legal products.[7]

According to Soedarto (in Isharyanto, 2016:2-3), legal politics is the state's policy through authorized state bodies to establish desired regulations that are expected to be used to express what is contained in society and to achieve aspirations. Although the legal process mentioned above is not identical to the intent of law formation, in practice, the process and dynamics of law formation often experience the same thing, namely the conception and political power that prevail in society significantly determine the formation of a legal product. Therefore, to understand the relationship between politics and law in any country, it is necessary to study the cultural background, economic conditions, political power within society, the state institutions, and its social structure, in addition to the legal institutions themselves.

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[5] Isharyanto, *Politik Hukum*, 1st ed. (Surakarta: Bebuku, 2016), 1.

[6] Sopiani Sopiani and Zainal Mubaraq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 17, no. 2 (June 30, 2020): 147, https://doi.org/10.54629/jli.v17i2.623.

[7] Iswantoro, "Politik Hukum Pembentukan dan Penataan Peraturan Perundang-Undangan," *Jurnal Majelis, Media Aspirasi Konstitusi* 5 (2015): 97.

From various definitions of legal politics, taking the same substance within them, it can be argued that legal politics is legal policy or the official guidelines regarding laws to be enacted, whether through the creation of new laws or the replacement of old laws, in order to achieve the goals of the state. Thus, legal politics is a choice regarding the laws to be enacted as well as a choice regarding the laws to be repealed or not enforced, all of which are intended to achieve the goals of the state as stated in the Preamble of the 1945 Constitution.[8]

The underlying idea from various definitions is based on the fact that Indonesia is a country with goals that must be achieved, and these goals are pursued using law as a tool through the enforcement or non-enforcement of laws in accordance with the stages of development faced by society and the state. Legal politics can be permanent or long-term, as well as periodic. Examples of permanent aspects include the implementation of the principle of judicial review, people's economy, the balance between legal certainty, justice, and utility, the replacement of colonial laws with national laws, state control of natural resources, independence of judicial power, and so on. Here, it can be seen that some principles outlined in the constitution simultaneously function as legal politics. On the other hand, periodic legal politics are those created according to the developments faced in each specific period, whether to enact or repeal laws. For example, during the period 1973-1978, there was legal politics to codify and unify laws in certain legal fields. In the period 1983-1988, there was legal politics to establish the State Administrative Court, and in the period 2004-2009, there were more than 250 proposed laws included in the National Legislation Program (Prolegnas).[9]

B. The Influence of Political Configuration on The Character of Legal Products

Speaking about legal politics cannot be separated from political configuration, which is a form or representation to describe the political conditions. The political conditions in a country depend on the form or representation of politics adopted by that country. Political configuration can also be interpreted as the arrangement or constellation of political power, which is dichotomously divided into two contrasting concepts: democratic political configuration and authoritarian political configuration. A country typically uses one of these concepts to determine the form or representation of its politics.[10]

[8] Moh Mahfud, *Politik Hukum di Indonesia*, 10th ed. (Rajawali Pers, 2020), 1.
[9] Mahfud, 2–3.
[10] Ummu Awaliah, "Konfigurasi Politik dan Produk Hukum di Indonesia Ditinjau dari Segi Hukum Tata Negara Islam" (Skripsi, Makassar, Universitas Islam Negeri Alaudiin Makassar, 2021), 16–17.

Among legal experts today, two opinions have emerged regarding the cause-and-effect relationship between politics and law. The first viewpoint is that of the Idealists, who tend to view it from the perspective of "das sollen." This perspective refers to Roscue Pound's opinion that sees "law as a tool of social engineering." According to this viewpoint, the law should be able to control and engineer the development of society, including its political life. It is reasonable for them, ideologically, to position the law as a guide and determinant of the direction of societal progress since, fundamentally, the law is designed to ensure order and protect the interests of the community. The second viewpoint is based on Von Savigny's perspective, stating that the law always evolves in accordance with the development of society; law grows and dies along with society. This belief is grounded in the idea that, fundamentally, the law is a manifestation of the legal consciousness of society. This means that the law must be a dependent variable on its external conditions, including politics. In other words, law is considered a product of politics.[11]

In the research conducted by Lintje Anna Marpaung, written in her article titled "The Influence of Legal Political Configuration on the Character of Legal Products," it has been proven that there is an influence between political configuration and legal products. The dynamics of influence between democratic and authoritarian political configurations have occurred throughout the history of the Republic of Indonesia. The ebb and flow of the tug-of-war between democratic and authoritarian political systems alternately emerges in historical periodizations. Along with these dynamics, the development of the character of legal products shows its influence, characterized by a push and pull between legal products that are responsive and those that are conservative. In line with the idea of stages of evolution in the responsive law theory as a developmental model, to prove the hypothesis above, this paper analyzes data qualitatively and normatively by making a classification of the history of political and constitutional development in Indonesia during the periodization of the implementation of the constitution in Indonesia. This is linked to major political moments that fundamentally influence the state's political system. In detail, the stages are as follows: (1) Period I, between 1945-1959, during which three constitutions were in effect: the 1945 Constitution, the 1949 RIS Constitution, and the Temporary 1950 Constitution known as the era of Revolution or Liberal Democracy; (2) Period II, between 1959-1966, with the reinstatement of the 1945 Constitution during the Old Order period, also known as the era of Guided Democracy; (3) Period III, between

[11] Lintje Anna Marpaung, "Pengaruh Konfigurasi Politik Hukum terhadap Karakter Produk Hukum," *Pranata Hukum* 7, no. 1 (2012): 1.

1966-1998, the era of the 1945 Constitution during the New Order; and (4) Period IV, from 1988-present, marked by the enactment of the 1945 Constitution after amendments, also known as the Reform Order.[12]

Regarding legal products resulting from political configuration, Mahfud (1999:6) explains that independent variables (political configuration) and dependent variables (character of legal products) are divided into two dichotomous ends. Political configuration variables are divided into democratic and authoritarian configurations,[13] while the character of legal products is divided into responsive/autonomous legal products and conservative/orthodox or oppressive legal products. By categorizing these two variables into dichotomous concepts, the hypothesis regarding the influence of political configuration on the character of legal products can be stated more specifically: A democratic political configuration will produce legal products that are responsive or autonomous, while an authoritarian political configuration will produce legal products that are conservative/orthodox or oppressive.[14]

Based on these variables, it can be conceptually outlined as follows: (1) A democratic political configuration is one that opens opportunities for the maximal participation of the people in actively determining state policies. In such a configuration, the government is more of a "committee" that must carry out the wishes of the democratic society, formulated by democratic means, and the legislative body and political parties play a proportional and more determining role in state policy-making. The media can function freely without the threat of censorship; (2) An authoritarian political configuration is one that places the government in a highly dominant position with interventionism in the determination and implementation of state policies, so the potential and aspirations of the people are not aggregated proportionally. Even with a highly dominant role of the government, the legislative body and political parties do not function effectively and serve more as a rubber stamp for the government's desires. The media lacks freedom and is always under government control; (3) Responsive/Autonomous Legal Products are legal products that reflect the fulfillment

[12] Anna Marpaung, 5.

[13] Awaliah, "Konfigurasi Politik dan Produk Hukum di Indonesia Ditinjau dari Segi Hukum Tata Negara Islam," 20–21.
Democratic political configuration is the arrangement of a political system that provides opportunities for the full participation of the people in actively determining public policies. On the other hand, an authoritarian political configuration is a system that allows the state to play a very active role and take almost all initiatives in the formulation of state policies.

[14] Solikhul Hadi, "Dinamika Regulasi Wakaf Di Indonesia Dalam Konfigurasi Politik," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 11, no. 2 (November 2, 2020): 273, https://doi.org/10.21043/yudisia.v11i2.7841.

of demands from both individuals and various social groups within society, thus more capable of reflecting justice in society. The process of creating responsive law openly invites participation and aspirations from the community, and judicial institutions serve as tools for the will of the people, with the formulations typically detailed and not open to interpretation based on the government's vision or will; and (4) Conservative/Orthodox Legal Products are legal products that reflect the political vision of those in power, so their creation does not genuinely invite the participation and aspirations of the people. If such procedures exist, they are usually more formalities. In such products, law is usually given a positivist instrumentalist function or becomes a tool for implementing the government's ideology and programs. The legal material formulations are usually fundamental, allowing them to be interpreted by the government according to its own vision with various implementing regulations.[15]

C. Development of Waqf Regulation on the Influence of Political Configuration

The discussion of political configuration in this context is related to the concepts of "democracy" and "authoritarianism" to identify the government in the Old Order and New Order—whether it is democratic or authoritarian. From this qualification, we will also examine the character of legal products it produces and the political struggles between actors and political institutions involved. Indicators of the legality of a law being considered responsive or orthodox can be seen in the process of creation, material, nature, and function, as well as the potential for interpretation. Meanwhile, the indicators of a democratic or authoritarian political configuration can be observed using patterns like Dahrendorf or Carter and Herz, which assess a country based on the distance between reality and the ideal in societal order.

The more liberal and pluralistic a country is considered, the more democratic it is, and conversely, if a country enforces repressive hegemony, it will be deemed authoritarian. The political configuration and legal character born in the old and new orders will refer to the above indicators as a conceptual map to determine the typology of a democratic or authoritarian regime.[16] Based on the author's analysis, in examining the political configuration and regulation of waqf, a mapping is used that is divided into four periods. (1) The Dutch colonial period, starting from the administrative regulation of

[15] Moza Dela Fudika, Ellydar Chaidir, and Saifuddin Syukur, "Konfigurasi Politik Lahirnya Undang-Undang Cipta Kerja," *Jurnal Legislasi Indonesia* 19, no. 2 (2022): 188, https://doi.org/10.54629/jli.v19i2.828.

[16] Syamsuddin Radjab, *Konfigurasi Politik dan Penegakan Hukum di Indonesia*, 1st ed. (Jakarta: Naga Media, 2013), 97,99.

waqf in 1905, (2) The old order era, the first period from 1945-1959, and the second period from 1959-1965, (3) The New Order regime starting from 1966-1998, and (4) The era of reform or post-Soeharto, starting in 1998 until now. The periodization is based on changes in the State Constitution (UUD) and the change of leadership in a regime from its rise to its fall or when there is a change in leadership.

D. Waqf Regulation During the Dutch Colonial Period

The politics implemented during the Dutch colonial occupation were inherently imperialistic, aiming for control over the natives, thus tending to be authoritarian and resulting in repressive regulations. Islam had a significant influence among the native population, sociologically and culturally, where Islamic law flowed and had deep roots in Indonesian society's culture. Islamic law was considered a living law because of its role as both a religious entity and part of the traditional (customary) practices of the Indonesian people, often regarded as sacred. Throughout history, Islamic law in Indonesia experienced dialectics in line with the legal and political visions of the rulers.[17]

The strength of Islamic influence prompted the Dutch to employ various methods to overcome challenges to their authority. Soetandyo Wignjosoebroto noted that in the early 20th century, the Dutch colonial government attempted three times to impose Western law on the indigenous population. These attempts were thwarted by Van Vollenhoven, who advocated for the application of customary law in indigenous society.[18]

This conflict was, in fact, a superficial dispute and a manifestation of the Dutch strategy of divide et impera. Imposing customary law on the Indonesian people was an effective way to sideline Islamic law and distance its followers from their religion in daily life. To avoid a strong reaction from the Islamic community, which considered Western law as infidel, the Dutch opted to promote customary law through Van Vollenhoven while simultaneously challenging Islamic law.

Dutch political efforts to weaken Islamic law in Indonesia, based on their divide et impera strategy, were evident in waqf regulation. In 1905, regulations related to waqf were introduced. On January 31, 1905, the Dutch Colonial Government issued

[17] Bani Syarif Mulia, "Realitas Hukum Islam dalam Konfigurasi Sosial dan Politik di Indonesia (Perspektif Sosiologi Hukum tentang Perkembangan Hukum Islam di Indonesia)," *Jurnal Hermenia* 2, no. 2 (2003): 240.

[18] Muhammad Iqbal, "Politik Hukum Hindia Belanda Dan Pengaruhnya Terhadap Legislasi Hukum Islam Di Indonesia," *AHKAM : Jurnal Ilmu Syariah* 12, no. 2 (August 7, 2012): 121, https://doi.org/10.15408/ajis.v12i2.972.

Circular Letter Number 435, published in Bijblad Number 6195/1905, regarding *Toezhat op den bouw van Mohammedaansche Bedebuizen*. This circular applied to the entire Java-Madura region except for Surakarta-Yogyakarta. The purpose of this circular was to oversee lands on which structures were built. If these lands were no longer used for waqf, they should not be neglected and should be registered to restrict them if the public interest demanded it. The essence of the circular addressed to regents was: (1) Regencies should register waqf lands already owned by Muslims, and (2) new waqfs required the regent's permission (Anshori, 2006:40). Muslims were aware of the Dutch colonial government's political efforts to weaken Islam, one of which was restricting waqf practices. According to Abdul Ghofur Anshori (2006:41), there was resistance to this circular for two main reasons: (1) seeking permission for waqf practices seemed unusual to Muslims who were accustomed to traditionally and religiously endowing their wealth, and (2) the circular was perceived as an attempt by the Dutch colonial government to interfere in the religious affairs of Muslims. Although the circular was not effectively enforced, it persisted for 25 years.

Subsequently, when the colonial government realized its ineffectiveness, a new circular was issued on January 4, 1931, by the Secretary of Government Number 1361/ab, published in Bijblade 1931 Number 12573, concerning *Toezich van de Regeering op Muhammedaansche Bedebuizen*, Friday Services, and Wakafs. The 1931 circular regulated: (1) Regencies only needed to register the origin of worship houses, whether endowed or not, and (2) permission for endowment was eased, as the regent only needed to assess the complete waqf request from aspects such as location and purpose, although registration was still required.

Despite appearing more flexible than the 1905 circular, the Dutch were perceived by Muslims to have hidden motives, creating an impression of the Dutch colonial government interfering by requiring permission for endowing property.[19] Until 1934, this circular remained unrevised, even after facing rejection from Muslims. Furthermore, the colonial government emphasized this circular again by issuing a circular on December 24, 1934, Number 3088/A, published in Bijblad Number 13390. This circular emphasized that in the case of disputes over waqf for places of worship, regents had the right to seek resolutions if requested by the disputing parties. Four years after the 1930 circular, due to continuous rejection from Muslims and the necessity for revisions, the colonial government finally issued a new circular on May 27, 1935, by the Secretary of Government Number 1273/A, published in Bijblad 1935

[19] Achmad Irwan Hamzani, *Perkembangan Hukum Wakaf di Indonesia*, 2nd ed. (Brebes: Diya Media Group, 2015), 85.

Number 13480, concerning *Toezicht van de Regeering op Mohammedaansche Bedebuizen En Wakafs*.

This latest circular marked a significant change, as Muslims were no longer required to seek permission to endow property; instead, they only needed to inform the regent. This notification was crucial for the regent to register the waqf and examine whether there were any local regulations hindering the waqf's goals. If there were hindrances, the regent had the authority to propose an alternative waqf land. Despite the changes in the latest circular, the Dutch government's desire to control the power of Muslims was still evident, particularly through the restriction of waqf practices. The Dutch created a conflict between customary law and Islamic law, so if a waqf's purpose was deemed contradictory to local customary law, the regent had the right to limit waqf practices in the region and transfer them elsewhere.[20]

The regulations outlined in the circulars, especially in the latest one, cannot be separated from the role of Snouck Hurgronje. In his analysis, Hurgronje asserted that Indonesian Muslims valued mysticism more than Islamic law and speculative religious thoughts over the actual practice of religious duties. Islam in Indonesia was still amalgamated with remnants of Hindu influences, and this syncretism accommodated the influx of Islam from India. Therefore, mysticism had an impact on all segments of the population.

Based on this perspective, Hurgronje believed that Islam had not been fully accepted by society. In his advice to the Dutch government, he argued that customs, especially those of Minangkabau, should be preserved and defended against religious groups' propaganda aiming to change them. Thus, customs should be allowed to evolve but remain under government supervision. Regionalism and the diversity of customs should be fostered so that the Indonesian population (Dutch East Indies at that time) would not have legal unity. Furthermore, in one of his speeches, Hurgronje formulated the strategy used to treat Dutch colonies. (1) In matters of pure religion (worship), the Dutch East Indies government granted freedom to Muslims to practice their religious teachings as long as it did not interfere with Dutch rule; (2) in the socio-cultural field, the government utilized various existing customs by encouraging the population to align themselves with Dutch practices, and (3) in politics, the government had to prevent any effort that would lead the people to political Islam fanaticism. This viewpoint shaped the Dutch political policy towards Islam in Indonesia.[21]

[20] Irwan Hamzani, 85.
[21] Iqbal, "Politik Hukum Hindia Belanda Dan Pengaruhnya Terhadap Legislasi Hukum Islam Di Indonesia," 120.

E. Waqf Regulation During the Old Order Era

1) Liberal Democracy Period (1945-1959)

During the period of 1945-1959, the political configuration that emerged was a democratic one. The political life during this period was characterized as liberal democracy.[22] When Indonesia declared independence on August 17, 1945, the idea of democracy played a prominent role in political life.[23] In this configuration, political parties played a dominant role in the formulation of state policies through their constitutional platforms (parliament). Along with this, the executive branch was in a relatively weaker position compared to the parties, leading to a fluctuating government and unstable political conditions.

Press freedom, compared to other periods, was functioning well, and censorship regulations that had been in place since the Dutch East Indies were officially lifted during the liberal democracy period. This period witnessed demands for the government to create a new and responsive national agrarian law. However, regarding Islamic law, it can be said that during the Old Order period, the position of Islamic law, including waqf law, was not better than during the Dutch colonial era.[24] President Soekarno's view on Islam seemed quite secular. Even though, at the formation of the Indonesian state during the BPUPKI session, Soekarno accepted and agreed to the existence of the Jakarta Charter, his support for Islam diminished as he gained power.

The Jakarta Charter, in reality, became a mere historical record. Thus, the desire to transform Islamic law into national law was delayed by about 29 years (1945-1974). This era marked a period of less harmonious relations between Islam and the state, especially during Soekarno's presidency. At least during Soekarno's time, this strained relationship reached its peak in 1955 during the Constitutional Assembly debates. During this era, Soekarno showed a diminishing sympathy towards Islam. Some even doubted Soekarno's Islamic faith solely because he was seen as an adversary of religion. Despite this, it would be unfair not to mention some developments in Islamic law during this period. The establishment of the Ministry of Religious Affairs on January 3, 1946, was the initial milestone in the journey of Islamic law. With the formation of the Ministry of Religious Affairs,

[22] Solikhul Hadi, "Regulasi UU Nomor 41 Tahun 2004 tentang Wakaf (Tinjauan Sejarah-Sosial)," *Jurnal Penelitian* 8, no. 2 (2014): 326.
[23] Mahfud, *Politik Hukum di Indonesia*, 294.
[24] Harun, "Perkembangan Hukum Islam dalam Konfigurasi Politik di Indonesia," *SUHUF* 21, no. 2 (2009): 163.

the authority of the Religious Courts was transferred from the Minister of Justice to the Minister of Religious Affairs.[25]

2) Guided Democracy Period (1959-1966)

The democratic political configuration ended in 1959 when President Soekarno issued a decree that was considered a path toward the emergence of guided democracy. During the guided democracy era from 1959 to 1966, the political configuration was characterized by an authoritarian regime.[26] Prolonged ideological conflicts paralyzed the cabinet and the Constitutional Assembly resulting from the 1955 general elections, opening the way and encouraging Soekarno, with the support of the military, to issue a decree on July 5, 1959.

The intention was to dissolve the Constitutional Assembly, revoke the Temporary 1950 Constitution, and revert to the 1945 Constitution. With this, the liberal democracy political system ended, and a new political system called "Guided Democracy" emerged, as named by Soekarno. This concept was deemed "in line with the personality of the Indonesian nation," while liberal democracy was seen as an import from the West conflicting with the cultural values (kinship) of the Indonesian nation.

During the 1959-1965 period, guided democracy under President Soekarno's control tended towards an authoritarian political pattern. Political parties that thrived during liberal democracy were gradually restricted and even disbanded. With such policies, the role of political parties became increasingly limited, weak, and unable to actively participate in formulating government policies. The 'DPR Gotong Royong' (DPR-GR), formed by Soekarno, replaced the DPRS. Its members were appointed by Soekarno as the President/People's Consultative Assembly (MPR) Mandataris and the "great leader of the revolution." The DPR-GR did not reflect the representation of the people, and there was no mechanism for the government to be accountable to the people. The DPR-GR became a kind of auxiliary body to the government or part of the executive branch that justified every policy taken by Soekarno. With the establishment of the National Council chaired by Soekarno himself, the principle of people's sovereignty, as stipulated in the 1945 Constitution, which was the constitutional basis for guided democracy, came to an end.[27]

[25] Harun, 163.
[26] Hadi, "Regulasi UU Nomor 41 Tahun 2004 tentang Wakaf (Tinjauan Sejarah-Sosial)," 326.
[27] Radjab, *Konfigurasi Politik dan Penegakan Hukum di Indonesia*, 108.

The regulations on waqf law set by the Dutch colonial government during the independence period were still in effect until new waqf regulations were enacted. Since waqf issues are part of land law (agrarian law), the government paid special attention to waqf in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Article 49 paragraph (3) of the UUPA stipulated that waqf of owned land is protected and regulated by Government Regulation. The UUPA of 1960 was born as part of the political propaganda of Guided Democracy and an effort to legitimize that political policy.

Guided Democracy was embodied in political concepts typical of the Old Order, namely; National Revolution, Political Manifesto, and the ideology of Indonesian Socialism. These political concepts were stated in the UUPA preamble; "Considering," under (b), that the existing agrarian law is partly based on the goals and principles of colonial rule and partly influenced by it, conflicting with the interests of the people and the state in completing the "current National Revolution" and universal development; "Opining," under (d), that this agrarian law must also be the implementation of the Decree of the President dated July 5, 1959, the provisions in Article 33 of the Constitution, and the "Political Manifesto" of the Republic of Indonesia, as affirmed in the President's Speech on August 17, 1960, which obliges the state to regulate land ownership and "lead" its use, so that land throughout the nation is used for the greatest prosperity of the people, both individually and collectively; "Remembering"; (a) Decree of the President dated July 5, 1959; (b) Article 33 of the Constitution; (c) Presidential Decree No. 1 of 1960 (L.N. 1960-10) regarding the Determination of the Political Manifesto of the Republic of Indonesia dated August 17, 1959, as the Guidelines for the State, and the President's mandate on August 17, 1960; (d) Article 5 jo. 20 of the Constitution; with the approval of the DPR-GR.[28]

The explanation of UUPA, regulated in the Additional State Gazette (TLN) Number 2044, also includes the concepts of Guided Democracy, as outlined in the General Explanation point 1; (a) because the current agrarian law is partly structured based on the goals and principles of colonial rule, and partly influenced by it, conflicting with the interests of the people and the state in carrying out comprehensive development to complete the "current National Revolution"; (b) because, as a result of the legal and political policies of colonial rule, this agrarian

[28] Supriyadi Supriyadi and Sholihul Hadi, "Regulasi Wakaf Di Indonesia Dari Masa Orde Lama Sampai Era Reformasi Dalam Tinjauan Politik Hukum," *ZISWAF : Jurnal Zakat Dan Wakaf* 6, no. 2 (October 24, 2019): 206, https://doi.org/10.21043/ziswaf.v6i2.6418.

law has dualism, namely the application of regulations based on Western law, causing difficulties and not aligning with the aspirations of national unity; (c) because for the indigenous people, the colonial agrarian law does not guarantee legal certainty.[29]

The concept of "Indonesian Socialism" clearly became the foundation for the enactment of Law No. 5 of 1960 concerning Basic Agrarian Regulations. This can be seen in the UUPA Explanation (TLN 2043) Roman numeral III number (1); ... the current agrarian law has the nature of "dualism" and creates differences between land rights according to customary law and land rights according to Western law, primarily based on the provisions in Book II of the Indonesian Civil Code. The Basic Agrarian Law aims to eliminate this dualism and fundamentally seeks to establish legal unity, in accordance with the wishes of the people as one nation and also in line with economic interests (Harsono, 2002: 36). Consequently, the new agrarian law must align with the legal consciousness of the majority of the people. Since the majority of the Indonesian people adhere to customary law, the new agrarian law will also be based on the provisions of customary law, as an original law, refined and adapted to the interests of the modern state and its relationship with the international community, as well as in line with "Indonesian Socialism." It is understood that customary law, in its development, cannot be separated from the influence of colonial capitalist and feudal society.[30]

The legal-political system during the Guided Democracy period in the Old Order era had implications for the regulation of waqf mentioned in Law No. 5 of 1960 concerning Basic Agrarian Regulations. Article 49 paragraph (3) stipulated; the waqf of owned land is protected and regulated by Government Regulation. However, in reality, Government Regulation governing the waqf of owned land could only be implemented seventeen years later, through Government Regulation No. 28 of 1977 concerning the Waqf of Owned Land, after the political configuration changed from the Old Order era to the New Order era.[31]

F. Waqf Regulation During the New Order Period

During this period, based on the development logic emphasizing the economic sector and growth paradigm, the political configuration was designed for a strong state

[29] Supriyadi and Hadi, 207.
[30] Supriyadi and Hadi, 207.
[31] Supriyadi and Hadi, 207.

capable of ensuring and shaping a powerful nation. A stable political environment was intentionally created because economic development would only succeed if supported by stable national stability. Initially, the New Order started its steps democratically. However, over time, the New Order gradually formed a configuration that tended to be authoritarian.[32]

The New Order was marked by the 1965 G30S/PKI incident, a failed coup that sharply led to the decline of Sukarno's power and his guided democracy. The power struggle between Sukarno, the Indonesian Communist Party (PKI), and the Army (AD) was severed, culminating in the victory of the Army. The downfall of the PKI and the collapse of Sukarno's regime were the results of their roles during the guided democracy era. The political crisis following G30S/PKI led Sukarno to issue the Supersemar (Surat Perintah Sebelas Maret) in 1966, transferring power to Suharto to take any necessary action to ensure government security, stability, and the president's personal safety. The Supersemar paved the way for the military, especially the Army, to play a major role in Indonesian politics in the post-G30S/PKI era. Suharto's government, which replaced Sukarno since 1967, named its administration the New Order. This official term was used from March 12, 1966, coinciding with the dissolution of the PKI, a day after the issuance of the Supersemar.[33]

The legal-political system during the New Order era, based on the results of the Second Army Seminar, had three keywords: economic consolidation, strong leadership and governance, and national stability. This meant the New Order's commitment to economic development had to be paid for by limited restraint on democratic life. Past experiences that excessively favored liberal democracy had led to prolonged political instability, and the state was considered unable to seriously consider economic development. For the New Order, economic development had to be pursued earnestly, even if it meant suppressing the political rights of the people or democracy. The New Order government, in its early days, never promised democracy and freedom in the future.[34]

Regarding waqf regulation, in addition to Government Regulation No. 28 of 1977 concerning the Waqf of Owned Land, waqf regulations during the New Order era were also stipulated in Law No. 7 of 1989 concerning Religious Courts. In Chapter III on the Powers of the Court, Article 49 (1) states that Religious Courts are tasked and authorized to examine, decide, and settle first-instance cases among Islamic believers

[32] Hadi, "Regulasi UU Nomor 41 Tahun 2004 tentang Wakaf (Tinjauan Sejarah-Sosial)," 326.
[33] Hadi, 326.
[34] Mahfud, *Politik Hukum di Indonesia*, 302.

in the fields of: (a) marriage; (b) inheritance, wills, and grants, based on Islamic law; (c) waqf and almsgiving.[35]

Waqf regulation during the New Order era was significantly influenced by the legal-political system run by Suharto, which was non-democratic or tended to be authoritarian. As stated by Abdurrahman Wahid, the Indonesian government during the New Order was an authoritarian system but did not reach the level of tyranny.[36] This was marked by the cessation of liberal democracy that initially prevailed in the early days of the New Order – namely, freedom for political parties and the mass media to criticize and express the reality within society.

Liberal tendencies only lasted until 1969/1971. The repressive attitude held by Soeharto, especially towards the Indonesian Communist Party (PKI) and its ideology, became more apparent when reviewing Government Regulation No. 28 of 1977 concerning the Waqf of Owned Land. This regulation was motivated by two factors: (1) the need for waqf administration order, and (2) protection against communist movements. This is reflected in the Explanation of Government Regulation No. 28 of 1977 concerning the Waqf of Owned Land, issued by the Minister of Home Affairs, Amirmachmud, on November 26, 1977. The general explanation mentions that on the other hand, there were many land disputes due to unclear land status. If not regulated promptly, it would not only diminish the religious awareness of Islamic followers but also hinder the government's efforts to promote the spirit and guidance of "religious obligations" (rejecting communist ideas and movements), as outlined in Pancasila, as stated in the People's Consultative Assembly Decree No. IV/MPR/1973.[37]

The actions taken by the PKI were concerning for the New Order government. The PKI had unilaterally claimed the UUPA 1960 and sabotaged waqf lands. An example of PKI maneuvers regarding waqf property is illustrated in the research by Agus Fathuddin Yusuf on the waqf of the Grand Mosque of Semarang. Initially, the legal basis for the waqf of the Grand Mosque of Semarang was Stb. 1912 No. 605, jo. Governor-General Decree of the Dutch East Indies dated August 12, 1896, No. 43. To secure these lands in 1962, the Minister of Religious Affairs (KH. Saefuddin Zuhri) strengthened and confirmed, based on Minister of Religious Affairs Decree No. 92 of 1962, that these lands were waqf lands managed by the Semarang City BKM. The

[35] Supriyadi and Hadi, "Regulasi Wakaf Di Indonesia Dari Masa Orde Lama Sampai Era Reformasi Dalam Tinjauan Politik Hukum," 207.
[36] Mahfud, *Politik Hukum di Indonesia*, 306.
[37] Supriyadi and Hadi, "Regulasi Wakaf Di Indonesia Dari Masa Orde Lama Sampai Era Reformasi Dalam Tinjauan Politik Hukum," 208.

reason was that almost all of these lands had been encroached upon and controlled by the PKI at that time.

After the G30 S/PKI incident that left the PKI in ruins, a trial was immediately held to determine the true status of the waqf lands of the Grand Mosque of Semarang. Through a lengthy trial process, more than 60 trials, the waqf lands were finally returned, according to formal jurisdiction, to the Management of the Grand Mosque of Semarang. It is undeniable that the methods used by the PKI caused conflicts everywhere, and many waqf lands became victims. Their argument was that everything, including land, belonged to communal ownership. In its history, the PKI consistently used land as part of its political strategy. Post-revolutionary youths who were dissatisfied, angry, and resentful quickly reacted to any leaders causing their dissatisfaction and anyone offering these youths a place to express their resistance against the status quo.

The early success of the PKI among the peasant population stemmed from similar conditions, namely widespread dissatisfaction and unrest in society. Although somewhat neglecting "land policies" and farmers' issues for several years (historically, the PKI only held the National Land Conference in April 1959), the PKI still gained broad support through captivating and sensational slogans, including "land for the people" and "land for farmers."[38]

To address and prevent this phenomenon, joint instructions were given to the Head of the Regional Office of the Ministry of Religious Affairs, the Head of the National Land Agency Regional Office, the Head of the District/City Department of Religious Affairs, and the Head of the Land Office of the District/City throughout Indonesia, regarding: First, to coordinate as best as possible in resolving waqf land certificates. Second, to strive to settle these waqf land certificates no later than the end of Pelita V. Third, to use the Project Operational Unit Cost (Proyek Operasi Nasional Pertanahan or PRONA) as the basis for financing the settlement of waqf land certificates. Fourth, to plan the mass handover of land certificates as part of the 31st anniversary of the Basic Agrarian Law on September 24, 1991, and the 46th Anniversary of the Ministry of Religious Affairs on January 3, 1992, with the handover to be conducted by the Minister of Religious Affairs and the Head of the National Land Agency. Fifth, to intensify waqf lands, whether sourced from the State Budget, Regional Budget, or the urgency of establishing Waqf Sharia Financial Institutions (LKS) as Efforts to Reduce Economic Disparities in Indonesia. Sixth, to report to the Governor of the First-Level Regional Head, the Head of the National Land Agency, and the Minister of Religious

[38] Supriyadi and Hadi, 208.

Affairs if there are difficulties or obstacles in financing, technical personnel, equipment, and other needs regarding waqf land certificates. Seventh, this instruction should be implemented as it should, and progress should be reported every three months to the Governor of the First-Level Regional Head, the Head of the National Land Agency, and the Minister of Religious Affairs. Eighth, this instruction is effective as of November 30, 1990. [39]

The Minister of Religious Affairs, as the President's Assistant, in his Decision Letter No. 154 of 1991 dated July 22, 1991, requested all institutions of the Ministry of Religious Affairs and other relevant government agencies to disseminate the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI). In terms of legal politics, the Compilation of Islamic Law is intended for technical judicial needs, providing substantive legal instruments for government agencies, and is a follow-up to Law No. 14 of 1970 concerning the Basic Provisions of the Judicial Power, which positions Religious Courts alongside other courts. This is reflected in both the considerations and explanations of the Compilation of Islamic Law. Consideration (b) in KHI states that it can be used as a guide by Government Institutions and by the community that needs it in solving issues in that field. In the second part of the Minister of Religious Affairs' dictum on the Implementation of the Presidential Instruction, it is also mentioned that all institutions should apply the Compilation of Islamic Law alongside other regulations in resolving issues related to marriage, inheritance, and waqf.[40]

The birth of the Compilation of Islamic Law is also inseparable from the political interests of accommodating the New Order regime, which followed (after Law No. 7 of 1989 concerning Religious Courts), towards Islamic politics. Even Munawir Sjadzali (1988), the Minister of Religious Affairs at the time, often stated that the initiator of the Compilation of Islamic Law was President Soeharto himself. The true initiator of the Compilation of Islamic Law is unclear; some mention Busthanul Arifin, Ibrahim Husain, and Munawir Sjadzali. Ismail Sunny does not say that President Soeharto was the initiator of the Compilation of Islamic Law, but he states that Soeharto was the one who pushed for the issuance of the Joint Decree between the Minister of Religious Affairs and the Chief Justice about the Compilation of Islamic Law.

Busthanul suspects that Munawir intentionally associated Soeharto's name with the Compilation of Islamic Law because it held significant meaning in the political

[39] Supriyadi and Hadi, 211.
[40] Supriyadi and Hadi, 211.

constellation at that time, where the President had extraordinary control. With this association, it was hoped that the course of the Compilation of Islamic Law and all its legitimacy efforts could proceed smoothly. Moreover, according to Busthanul, there were indications of opposition from the State Secretariat Building, where Sudharmono and Murdiono, as well as A. Hamid S. Attamimi (Deputy Secretary of the Cabinet), expressed resistance to the Compilation of Islamic Law behind the scenes.[41]

G. Waqf Regulation During the Reform Era (1998-Present)

The reform era was marked by a flourishing democracy movement in 1998 and the revocation of Law No. 11/PNPS/1963, which was a Presidential Decree/Law that provided a legal basis for the authorities to take harsh repressive actions against anyone who might threaten the position of those in power.[42] This is closely related to the political configuration and its influence on legal products. According to Mahfud (2010: 374), it is evident and proven that law, as a political product, is greatly influenced by political changes.

As soon as the New Order regime under Soeharto fell, laws, especially public laws related to the distribution of power, particularly constitutional laws, were immediately amended. Various laws in the political field produced by the New Order were overhauled, dismantling assumptions and eliminating political violence that was part of their content. The concept of political reform refers to a gradual process of change in all aspects of political life to create a more democratic political environment, promoting the realization of people's sovereignty, freedom, equality, and justice.

Legal reforms also extended to laws governing waqf. Law No. 41 of 2004 concerning Waqf is one of the government's steps in achieving the National Development Program in the field of national legal development. This is evident from the letter submitted by the Directorate of Zakat and Waqf to the Minister of Justice and Human Rights regarding the initiative for the Waqf Bill. The letter emphasizes the need for improvement in waqf legislation after considering the following: First, Law No. 25 of 2000 concerning the National Development Program (PROPENAS) 2000-2004 states that one of the indicators of the success of national development in the legal sector is the enactment of laws on Applied Law for Religious Courts, including one on Waqf Law. Second, the provisions regarding waqf that have been in effect so far have not been a strong foundation for resolving waqf issues, including its empowerment in the economic sector. These regulations include Law No. 5 of 1960 concerning Basic

[41] Supriyadi and Hadi, 211.
[42] Mahfud, *Politik Hukum di Indonesia*, 373.

Agrarian Principles, Article 14 paragraph (1) letter b, and Article 49 paragraph (3), Government Regulation No. 28 of 1977 concerning Waqf of Owned Land, Presidential Instruction No. 1 of 1991 which includes the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) partially related to waqf, and several other regulations, including Joint Instructions from the Minister of Home Affairs and the Minister of Religious Affairs, as well as technical regulations issued by the Minister of Religious Affairs. The involvement of all stakeholders in the drafting of the Waqf Bill is evident in the process of the birth of Law No. 41 of 2004 concerning Waqf, which took place from September 5, 2002, to October 27, 2004.[43]

V. CONCLUSION

Based on the research results, there are several conclusions:

a. The legal politics of waqf in Indonesia have been influenced by the evolving political configurations from the colonial era to the reform era. In this context, political configuration serves as the independent variable, while waqf, as a legal product, is the influenced or bound variable. Furthermore, the legal politics of waqf can be understood through the characteristics of Indonesia's governance, which can be generally divided into two types: democratic and authoritarian. A democratic government tends to produce responsive legal products, whereas an authoritarian government tends to produce repressive legal products. The regulation of waqf, as one legal product, undergoes changes parallel to the political developments in Indonesia. Based on the above research, (1) during the Dutch colonial period, waqf regulations were aimed at monitoring and restricting the management of land by Muslims if the waqf's purpose posed a threat to governmental authority; (2) during the Liberal Democracy period when Indonesia gained independence, waqf regulations underwent minimal changes and still followed Dutch inheritance rules. The only change was in its administration, marked by the establishment of the Ministry of Religion in 1946, which later delegated its authority to the Office of Religious Affairs (KUA). Political parties held stronger positions during this period, and their demands prompted the government to consider legal reforms in agrarian law due to the perceived exploitation, dualism, and feudalism in Dutch colonial land laws; (3) during the Guided Democracy period, the government, led by Sukarno, tended to be authoritarian. This was evident in the socialist ideology, closely associated with Sukarno, leading to the enactment of Law No. 5 of 1960 concerning Basic

[43] Hadi, "Dinamika Regulasi Wakaf Di Indonesia Dalam Konfigurasi Politik," 281–82.

Agrarian Principles, aiming to eliminate the dualistic principles distinguishing land rights based on customary law and civil law. The regulation of waqf in this law was specified in Article 49 paragraph (3), stating that endowed land is protected by government regulations; (4) during the New Order period, the government initially applied democratic legal politics, but it did not last long and eventually shifted to an authoritarian stance. This is evident from the inclusion of Suharto's name in the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) to demonstrate his authority. The background of the enactment of Government Regulation No. 28 of 1977 concerning Waqf of Owned Land was for the protection against the Communist Party of Indonesia (PKI), reflecting a repressive legal product from an authoritarian government; and finally, (5) during the reform era, a democratic political configuration prevailed, leading to the realization of aspects such as people's sovereignty, freedom, equality, and justice. In a more concrete aspect, the legal reform during this period, including Law No. 41 of 2004 concerning Waqf, was enacted as part of the government's efforts to achieve the National Development Program (PROPENAS) in the field of national legal development.

b. Law No. 41 of 2004 concerning Waqf was enacted during the reform era post-New Order. This Waqf Law is a legal product of the period characterized by a democratic political configuration in Indonesia. It represents the government's initiative to foster aspects like people's sovereignty, freedom, equality, and justice within the framework of the National Development Program (PROPENAS). In other words, Law No. 41/2004 is responsive, placing law as a means to respond to social desires and public aspirations, rather than being repressive – where law functions as a tool of power aiming to maintain the status quo frequently applied as a pretext for ensuring order.

Recommendations:

a. It is essential to focus on case studies in regions of Indonesia where significant political changes have occurred. Conduct an examination of how these changes impact the management and utilization of waqf.
b. A comprehensive evaluation of existing waqf programs in Indonesia is necessary as a consequence of waqf regulation by political configurations. Review their success, challenges, and lessons learned to enhance the effectiveness of waqf management and utilization.

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