THE INFLUENCE OF ISLAMIC LAW ON INDONESIAN LEGAL POLITICS

Maryani, Zainal Arifin, Poppyana Permadela, Febi Bunga Nurmala Sari, Evin Oktafian Ramadan, Rio Amanda, Solihin
Email:
maryani@uinjambi.ac.id, zainal7319@gmail.com, poppyanap@gmail.com, febixtkc32019@gmai.com, evinevin954@gmail.com, rioamandario3@gmail.com, sholihinrusnita24@gmail.com

Abstract

Studies on the influence of Islamic law in Indonesia can be one basis for muslims to define the future strategy of the Indonesian nation closer or familiarizing with Islamic law that has the effect of legal politic in Indonesia. At least it show sthat the influence of the process of Islamization of a society is nothing that can be completed immediately, but the center of attention is focused on the legal position of Islam can influence on legal politic in indonesia whic his polarized in the establishment of the legal system. Political policy in the law not only in legal proceedings that will be and are being enforced but includes also the law that have occurred, have practical purposes to allow positive legislation can be better formulated so as to provide guidance not only on legislation but also to the Courts as an organizer or as an implementing decision. -is has been experienced by the people of Indonesia since the era Dutch colonial that changed significantly when the Indonesian republic independent on 17th of August 1945, because they have to adjust in accordance with applicable law and the constitutional foundation the state ideology of Pancasila and the Constitution of 1945 or a law that is built upon the activity and creativity based upon ideals that is sourced on the cultural values of the nation which has long since evolved to the present

Keywords: *Islamic law, political law and the applicable legal system*

A. INTRODUCTION

In the international arena, Indonesian Muslims can be said to be the largest Muslim community within one state territorial boundary whose existence is highly regarded. Therefore, it is very interesting to study the influence of the historical development of Islamic law within the Islamic community on the application of Islamic law in the country starting from when the Muslim community arrived in Indonesia. A study of the influence of Islamic law in Indonesia can be used as a stepping stone for Muslims in particular to determine the right strategy in the future in bringing this nation closer and "familiarizing" this nation with Islamic law. The historical process of Islamic law is characterized by "collisions" with previously prevailing traditions and with state political policies, as well as actions taken by previous Indonesian Islamic figures so that it can become an important study material in the future. At the very least, this influence shows that the process of Islamization of a benefit is not a process that can be completed immediately. In this context, it is interesting to examine the position of Islamic law

which can influence legal politics in Indonesia which will ultimately polarize the Indonesian legal system.

The legal system in force in Indonesia cannot be separated from the legal politics that have occurred since the Dutch Colonial era and there were very significant changes when the Republic of Indonesia became independent on August 17, 1945, because during the colonial era the laws that were enforced had to be adjusted to the status of the population group/descendant as determined based on the Dutch Colonial Law at that time.

What is meant by legal politics is "legal policy or official policy lines regarding laws that will be enforced either by making new laws or by replacing old laws in order to achieve state goals". Thus it can be said that legal politics is a choice about the laws that will be enforced and at the same time a choice about the laws that will be revoked or not enforced, all of which are intended to achieve state goals as stated in the opening of the 1945 Constitution.[1] Next, Padmo Wahyono stated that the basic policy that determines the direction, form and content of the law to be formed,[2] further explained that legal politics is the policy of state administrators regarding what is used as a criterion for punishing something which includes the formation, determination and enforcement of law.

From the several definitions above, it can be concluded that what is meant by Indonesian legal policy here is the basic policy of state administrators (the Republic of Indonesia) in the legal field that will, is and has been in effect which is based on the values that apply in the interests of achieving the desired state goals. In this sense, there are 5 (five) things that are emphasized as agendas in Indonesian legal policy, namely, (1) The objectives of national legal policy, (2) Basic policies that include concepts and positions, (3) State administrators as the formers of the basic concepts, (4) Legal material that includes laws that will, are and have been in effect and, (5) The process of forming laws.

So in Indonesian legal policy, these five elements are agendas that are used as basic guidelines for all forms and processes of formulating, forming and developing laws in the country which are formulated in fundamental laws and regulations. In this regard, in this article the author will highlight 2 (two) problems, namely the objectives of

[1] Moh. Mahfud MD, *Legal Politics in Indonesia* (Jakarta: PT. Rajawali Persada, 2010), p. 1
[2] Padmo Wahyono, *Legal Development Framework in Indonesia* (Jakarta: Pustaka Sinar Harapan, 1986), p. 160

national legal policy and basic policies on the concept and position of national legal policy.

Furthermore, the role of elements or parts of the very diverse Indonesian legal system, such as customary law, Islamic law and Western (Continental) law, influence each other which is determined by the government's political decision in determining/revoking and changing the applicable legal system. These three legal systems are the crystallization of 5 (five) legal systems that have developed in the world, including; (1) the Common Law system adopted in England and its former colonies which are now members of the Commonwealth of Nations, (2) the Civil Law system derived from Roman law adopted in continental Western Europe brought to colonial areas or former colonial areas of the West, (3) the customary law system in Asian and African countries, (4) the Islamic legal system adopted by Muslims wherever they are, both in Islamic countries and other countries whose populations do not adhere to Islam, and (5) the Communist/Socialist Legal system implemented in communist/socialist countries such as the Soviet Union/Russia, China and North Korea and other countries that adhere to communism.[3]

In the view of national legal politics, three of the five legal systems, namely customary law, Islamic law and Western law have been implemented since the Dutch colonial era and even before that until now, have been used as basic values in the interests of the formation of Indonesian law. For the benefit of Indonesia because the majority of the population is Muslim, Islamic law provides a large contribution in determining the objectives and basic policies in laying the basic concept of national legal politics in the framework of forming the Indonesian legal system, especially certain civil laws that apply to Muslims such as cases, (1) Marriage, (2) Inheritance, Wills and Grants made based on Islam, (3) Waqf and Alms. Specifically, it can be described that the influence of Islamic law in the process of Indonesian legal politics is quite long, going through several stages, namely from: (1) the Pre-Dutch Colonial Period, (2) the Dutch Colonial Period, (3) the Japanese Occupation Period, (4) the Independence Period (1945), (5) the Old Order and New Order Eras, (6) the Reformation Era.

Regarding the influence of Islamic law in legal politics in Indonesia, the fundamental issue that is of concern is how the position of Islamic law is in the basic policies carried out by state administrators in the field of law that will be and has been in

[3] H. Mohammad Daud Ali, *Islamic Law: Introduction to the Science of Law and Islamic Legal Order in Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2013), p. 208

force which originates from the values that apply and develop in the benefits to achieve the goals of the state as stipulated in the preamble to the 1945 Constitution. National legal politics has goals that include two aspects, namely; firstly as a means that can be used by the government to create the desired national legal system and secondly the national legal system is realized to achieve broader national ideals. In this regard, the position of Islamic law has a great influence in Indonesian legal politics in order to determine the applicable national legal system, because the majority of Indonesians adhere to the Islamic religion which always lives in contact with Islamic principles both in sharia law and fiqh. Based on the description above, it can be stated that the focus of this article is regarding the regulation of certain Islamic civil law in the formation of the national legal system, and the form of statutory regulations formed based on Islamic law in the national legal system.

In legal science, there are various views on law, some of which see it as the embodiment of certain values, namely this method stems from the view that it always questions and tests the existence of the law in realizing the basic values of the legal objectives. There are those who view it as an abstract system of legal regulations, that law is seen as an autonomous institution as a separate subject apart from the influence of other parties, then there are also those who understand it sociologically as a social instrument that regulates social life, meaning that law is seen as a social phenomenon, whereas Benefit factors influence the formation, development, reality and effectiveness of law in benefiting.[4] On the basis of these three views, in line with the view of Roscoe Pound's Theory, namely "The Law, the Balance of Interests", the meaning is that the law must not be allowed to drift in logical analytical concepts that are drowned in technical and juridical expressions that are too exclusive, but must be able to be implemented through " law in the books and law in action". Then the interests referred to according to Pound's Theory, put forward three categories, namely public, social and personal interest groups,[5] meaning that citizens who live their lives in the Republic of Indonesia are guaranteed to live in a safe, secure, calm, peaceful manner and are free to practice the teachings of their respective religions.

This is guaranteed in Article 29 paragraph (1) of the 1945 Constitution, which states that the Republic of Indonesia is based on the belief in One Almighty God, a basic

[4] Marwan Mas, *Introduction to Legal Science* (Makasar: Ghalia Indonesia, 2003), p. 14
[5] Bernard L. Tanya, *Legal Theory: Human Tertive Strategies Across Space and Generations* (Surabaya: CV. Kita, 2006), p. 181

norm which is interpreted as only possible with Pancasila democracy.[6] That in the State of the Republic of Indonesia, nothing can happen or happen that is contrary to Islamic rules for Muslims, or rules that are contrary to Christians, or contrary to the rules of Hinduism for Balinese Hindus, or contrary to morality. Buddhism for Buddhists.

Within the scope of the problem discussed in this article regarding the influence of Islamic law in legal politics in Indonesia on the historical view of the archipelago, there are three different legal systems that have been in effect, such as the customary law system, Islamic law and Western law, which have elements of similarities and differences. Between Western law and customary law, there are basically similarities in scope because both only regulate relations between humans and humans and rulers in society. Meanwhile, the scope regulated in Islamic law does not only regulate the relationship between humans and humans and rulers in the interests of benefit, but also regulates the relationship between humans and Allah SWT, God Almighty. Thus, it can be concluded that customary law and Western law direct their views only to worldly life, whereas Islamic law is not limited to worldly relationships but includes matters of the afterlife, namely life after this worldly life.

The different views between these three legal systems have been questioned since the Dutch East Indies colonial era (VOC), but because they always faced resistance, the Dutch finally adapted by forming legislation that allowed indigenous people to apply limited Islamic law in addition to customary law. This is in accordance with Van Vollenhoven's view that customary law must be maintained as law for native people and must not be pressured by Western law, because if customary law is suppressed by Western law then Islamic law will apply. This cannot happen. Then Ter Haar, who became the master architect of limiting the authority of the Religious Courts in Java and Madura, stated that it was impossible for Islamic law and customary law to unite because customary law was based on the reality of the law in terms of benefits, while Islamic law was based on books of human reasoning alone, therefore In theory Islamic law cannot be accepted so that the Religious Courts in Java and Madura are limited to the smallest possible size. In fact, one who does not want to acknowledge the application of Islamic law at all is Christian Snouck Hurgronje, so in his "Reception Theory" he says that according to the results of his research in Aceh and Tanah Gayo, the law that applies to

[6] Hazairin, *Islamic Law Rules I*, 1954/1955 compiled by Mohammad Daud Ali, 1955, p. 93

the two Muslim regions is not Islamic law but customary law, the influence of Islam. It only has legal force if it is truly accepted by customary law.

This view of the Reception Theory is rejected by the LWC. Van Den Berg stated that based on his findings, Indonesian Muslims had accepted Islamic law as a whole as a whole (reception in complex), meaning that according to Van den Berg, Islamic law was accepted by Indonesians not only in parts but had been accepted as a whole. unity. Therefore, Van Den Berg's opinion is called "Theory of reception in complexu".

On the basis of a historical view of the three legal systems that apply in the archipelago, after Indonesia became independent and expressed the belief that the Jakarta Charter of 22 June 1945 animating the 1945 Constitution was a series with the Constitution, as stated in article 29 of the 1945 Constitution, which in turn is the basis and values for religious life. Thus, the position of Islamic law in the Indonesian legal system plays a very important role so that it receives great attention as one of the subjects of discussion in the Ministry of Education's Conference. Justice in Salatiga in 1950, Hazairin put forward the problem of the relationship between Islamic law and customary law, namely that in implementing Islamic law it is no longer based on customary law but directly applies on the basis of statutory regulations, as is the case with enforcing customary law in Indonesia on the basis of legislation. invitation.

Next, Hazairin's views on the "Reception Theory" put forward at the Conference in Salatiga were developed in several of his writings, lectures and lectures at the UI Faculty of Law. and also echoed in the Symposium on Basic Legal Problems in Indonesia held by LIPI (1976) in its conclusion emphasizing that "Reception Theory" can no longer be used to look at the reality and (basic) problems of law in Indonesia (Symposium Conclusion 1978). This statement was put forward by Symposium participants after studying the contents of Law no. 1 of 1974 concerning Marriage.

B. DEVELOPMENT OF ISLAMIC LAW IN INDONESIA

1. Islam in the Pre-Dutch Colonial Period

According to some historians, the initial arrival of Islam in the archipelago was in the first century of the Hijriyah, or around the seventh and eighth centuries AD, and the gateway to entry was through the northern area of Sumatra Island which was later used as the starting point for the missionary movement of Muslim immigrants. Gradually the da'wah movement began to form the first Islamic community in Peureulak, East Aceh, and expanded to several other areas around the region, followed by the establishment of the first Islamic kingdom in the country in

the 13th century, known as the Samudera Pasai Kingdom, located in the North Aceh region.

The influence of Islam spread so quickly to various regions of the archipelago which caused several Islamic kingdoms to be established following the establishment of the Samudera Pasai Kingdom in Aceh, not far from Aceh stood the Malacca Sultanate, then on the island of Java stood the Sultanates of Demak, Mataram and Cirebon, then expanded to the east In the archipelago, such as Sulawesi and Maluku, stood the Kingdom of Gowa and the Sultanates of Ternate and Tidore.

Several of these Sultanates, as recorded in history, began to establish Islamic law as valid positive law. By establishing Islamic law as positive law in each of these sultanates, it will certainly strengthen the practice of Islamic law and sharia which has indeed developed in Muslim society. that time. These facts are proven by the existence of fiqh literature written by Indonesian scholars around the 16th and 17th centuries. This condition continued until Dutch traders came to the archipelago.

2. Islamic Law during the Dutch Colonial Period

The beginning of Dutch colonization of the archipelago began with the presence of the Dutch Trade Organization in the East Indies, or better known as the VOC (Vereenigde Oostindische Company). As a trade organization, the VOC had an extraordinary role beyond its function. This was because the Dutch Royal Government made the VOC an extension in the East Indies because apart from carrying out trade functions, the VOC also represented the Dutch Kingdom in carrying out government functions using the Dutch law they brought.

However, in reality, the use of Dutch law experienced many difficulties, due to the fact that the native population had a hard time accepting laws that were foreign to them. As a result, the VOC freed the native population to carry out what they had been running.

In connection with Islamic law which has long been in force for indigenous people, several "compromises" made by the VOC can be noted, including:

1) In the Batavian Statute which was established in 1642 by the VOC, it was stated that Islamic inheritance law applies to followers of the Islamic religion
2) There is an effort to compile Islamic family law that has been in force in the midst of society. This effort was completed in 1760. This compilation became known as the Compend

3) There are similar compilation efforts in various other regions, such as in Semarang, Cirebon, Gowa and Bone.

As an illustration, in Semarang, for example, the compilation is known as the Mogharraer Law Book (from Al-Muharrar). However, this compilation has advantages over the Freijer Compendium, because it also contains the rules of Islamic criminal law.

This recognition of Islamic law continued even before the transition of power from the British Empire to the Dutch Empire again. After Thomas Stanford Raffles served as Governor General for 5 years (1811-1816) and the Dutch regained control over the Dutch East Indies, it became increasingly apparent that the Dutch were trying hard to assert their power in this region. However, this effort encountered difficulties due to religious differences between the colonizers and the colonial people, especially Muslims who were familiar with the concepts of "dar al-Islam" and "dar al-harb". That is why the Dutch government is trying various ways to solve this problem. These include (1) spreading Christianity to the native people, and (2) limiting the application of Islamic law to only inner (spiritual) aspects.

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To emphasize the restrictive efforts carried out by the Dutch East Indies government, the 1919 Law was issued which contained provisions regarding population classification by adding one more paragraph to Article 109 RR, and only came into effect on January 1 1920. With the new provisions in the formulation of

the text of Article 109 RR, its entire formulation was adopted as the formulation of article 163 of the Indsche-Staatsregeling (IS), which contains the provision that the Indonesian people are divided into three groups that is:

1) The European group, which consists of: (a) all Dutch people, (b) all Europeans other than the Dutch, (c) all Japanese, (d) all people who come from places other than (a, b, and c , mentioned), (e) legitimate children or those recognized according to law and subsequent descendants of persons including b, c, and d who were born in the Netherlands
2) The Bumiputera group are all people who belong to the original Indonesian people of the Dutch East Indies and who did not convert to another group, and those who originally belonged to another group of people but have been assimilated into the original Indonesian people
3) The Foreign Eastern group is all people who are not European or Bumiputera.[7]

In this way, all the provisions stipulated in RR and IS become basic operational provisions regarding law that are binding for every group or resident of the Dutch East Indies, therefore they can be said to be the Constitution or Basic Law in the territory of the Dutch East Indies.

Then the efforts to limit the application of Islamic law by the Dutch East Indies Government can be concluded, chronologically as follows:

a) In the mid-19th century, the Dutch East Indies Government implemented conscious Legal Politics, namely a policy that consciously wanted to reorganize and change legal life in Indonesia with Dutch law
b) Based on the memorandum submitted by Mr. Scholten Van Oud Haarlem, the Dutch Government instructed the use of religious laws, indigenous institutions and customs in matters of disputes that occurred between them, as long as they did not conflict with generally recognized principles of propriety and justice. This last clause then places Islamic law under the subordination of Dutch law
c) On the basis of the reception theory issued by Snouck Hurgronje, the Dutch East Indies Government in 1922 then formed a commission to review the authority of religious courts in Java in examining inheritance cases (on the grounds that it had not been accepted by local customary law)

[7] Sirojul Munir, *Regional Government Law in Indonesia: Concepts, Principles and Actualization* (Yogyakarta: Genta Publishing, 2013), p. 31

d) In 1925, changes were made to Article 134 paragraph 2 of the Indische Staatsregeling (which has the same content as Article 78 Regerringsreglement), which essentially states that civil cases between Muslims will be resolved by Islamic religious judges if this has been accepted by customary law and as long as it is not determined otherwise by an ordinance.

This weak position of Islamic law continued until near the end of Dutch East Indies rule in Indonesian territory in 1942.

3. Islamic Law During the Japanese Occupation

On March 8 1942, in the name of the Dutch War Force, General Ter Poorten declared unconditional surrender to the Japanese military commander for the Southern region, the Japanese Government immediately issued various regulations. One of them is Law Number 1 of 1942, which confirms that the Japanese Government continues all the powers previously held by the Governor General of the Dutch East Indies. This new decree certainly has implications for the continued application of Islamic law as in its final condition during the Dutch East Indies era.

Furthermore, the Japanese Occupation Government continued to implement various policies to attract the sympathy of Muslims in Indonesia, including:

a. The Japanese Military Commander promised to protect and promote Islam as the religion of the majority of the population of the island of Java
b. Established Shumubu (Office of Islamic Religious Affairs) led by the Indonesian people themselves
c. Allowing the establishment of Islamic mass organizations, such as Muhammadiyah and NU
d. Approved the establishment of the Indonesian Muslim Shura Council (Masyumi) in October 1943. Which eventually became a Political Party
e. Approved the establishment of Hezbollah as a reserve force to accompany the establishment of the PETA (Defenders of the Homeland) army[8]
f. Attempting to fulfill the pressure of Islamic figures to restore the authority of the Religious Courts by asking a customary law expert, Soepomo, in January 1944 to submit a report on this matter. However, this effort was then "countered" by

[8] Amudra Wibawa, *Countries in the Archipelago: From City States to Nation States from Modernization to Nation States from Modernization to Administrative Reform* (Yogyakarta: Gajah Mada University Press, 2001), p. 69

Soepomo on the grounds of complexity and postponed it until Indonesia became independent.

Due to the situation at that time, there was almost no significant change in the position of Islamic law during the Japanese occupation of the country. However, the Japanese occupation period was still better than the Dutch East Indies, especially in terms of new experience for Islamic leaders in managing religious issues. Abikusno Tjokrosujoso stated that, Dutch government policies had weakened the position of Islam. Islam does not have trained religious officials in mosques or Islamic courts. The Netherlands implemented political policies that weakened the position of Islam. When Japanese troops arrived, they realized that Islam was a force in Indonesia that could be exploited.

4. The Era of Parliamentary Democracy (1945-1945) and Indonesian Legal Politics

Even though the Japanese Occupation provided many new experiences for Indonesian Islamic leaders, in the end, as Japan's strategic steps became weaker in winning the war which then paved the way for the process of Indonesian independence, Japan began to change the direction of its policy. They began to "look" and provide support to Indonesian nationalist figures or nationalist groups to lead Indonesia's future, then several state bodies and committees, such as the Advisory Council (Sanyo Kaigi) and BPUPKI (Dokuritsu Zyunbi Tyoosakai) were handed over to the nationalist camp. It can be seen that until May 1945, this committee consisted of 62 people, and 11 (eleven) of them represented Islamic groups. On this basis, Ramly Hutabarat stated that BPUPKI "was not a body formed on the basis of democratic elections, even though Soekarno and Mohammad Hatta tried to ensure that the members of this body were representative enough to represent various groups in Indonesian society."

The long debate about the foundations of the state in the BPUPKI session then ended with the birth of what was called the Jakarta Charter. The most important compromise sentence of the Jakarta Charter is mainly in the sentence "The state is based on God with the obligation to implement Islamic law for its adherents". According to Muhammad Yamin, this sentence makes independent Indonesia neither a secular state nor an Islamic state.

This formulation actually gives rise to an implication that requires the establishment of a law to implement Islamic Sharia for its adherents. However, the compromise formulation of the Jakarta Charter ultimately failed to be finalized when

it was ratified on August 18 1945 by the PPKI. There are many obstacles regarding the causes of this. But all versions point to Mohammad Hatta who expressed objections from Christian groups in Eastern Indonesia. Hatta said he received this information from a Japanese navy officer on the afternoon of August 17 1945. However, Lt. Col. Shegeta Nishijima, the only Japanese navy officer Hatta met at that time, denied this. He even said that it was Latuharhary who raised this objection. The seriousness of this demand then needs to be questioned considering that Latuharhary together with A.A. Maramis, another Christian figure from Eastern Indonesia, agreed to the compromise formula during the BPUPKI session.

Ultimately, in this period, the status of Islamic law remained ambiguous. Isa Ashary said that this striking historical event was perceived by Muslims as a 'magic game' which was still shrouded in a cloud of secrecy as a political siege to the ideals of Muslims.

With the compromise regarding the First Principles regarding Islamic Sharia from the Jakarta Charter dated 22 June 1945 as the basic concept of the State which is a new "legal political" process for the Republic of Indonesia, which was only proclaimed on 17 August 1945 with the 1945 Constitution as the basic law, the Proclamation of Independence demanding renewal or replacement of the laws left over from Dutch colonialism and Japanese colonialism, because if viewed from the perspective of State Law, the proclamation of Independence is an act of overhaul/replacement and total enforcement of the law. The proclamation will bring Indonesian society to a different legal reality than before when it was colonized and transformed into a free and independent society. The goal of the law will change completely and be the opposite from the previous goal of defending and preserving the colonialists to the true goal of filling independence with a work ethic that also changes from being colonized to becoming an independent and sovereign nation, and this will also require the consequences of changing the positive law that was previously in force.

From the description above, it can be described the efforts of the nation and state in the policy of establishing the foundations of state power through the formation of the Republic of Indonesia Constitution which will be and is currently in effect, which originates from the cultural values of society to achieve the state goals envisioned as stated in the preamble to the 1945 Constitution.

In this era of independence, the Indonesian people began to organize national legal politics in the sense of the basic policies of state administrators in the field of law that will, are and have been in force, originating from the values that apply in society to achieve the state's aspired goals.

Referring to the definition of National legal politics above, the aim is to realize the ideals of the nation and state of the Republic of Indonesia which includes two interrelated aspects, namely, (1) As a tool or means and steps that can be used by the government to create the desired national legal system and, (2) With this legal system the ideals of the greater and broader Indonesian nation will be realized.[9] This needs to be understood that it cannot be separated from the historical context that after Indonesia became independent we did not yet have a law. which originates from its own traditions but still utilizes legislation left over from the Dutch Colonial era, however, based on political considerations and nationalism, legislation is undergoing a process of nationalization such as replacing the Criminal Code (KUHP) from Wetboek Van Straafrechts, the Civil Code (KUHPer) from Burgerlijk Wetboek, the Commercial Code (KUHD) from Wetboek Van Koofhandel with several improvements to the articles to adapt to an independent, sovereign and religious country. Based on considerations, there should be no legal vacuum in accordance with article. 1 of the Transitional Regulations of the 1945 Constitution which states that all existing laws and regulations remain in effect as long as new ones are not implemented according to this Constitution.

In the context of future development of national law, apart from being sourced from Pancasila and the 1945 Constitution, it can also be sourced from other laws as long as it does not conflict with the spirit of Pancasila and the 1945 Constitution, with this approach we can maintain national legal identity and simultaneously accommodate other good legal cultures, and can help speed up the process of developing a national legal system.

In this regard, in building a national legal system the government has established a policy to utilize three legal systems that exist (living law) and are developing in Indonesia as raw materials, namely, (1) Customary Law, (2) Islamic Law and (3) Western Law. (Netherlands), during the colonial period these three legal systems came into force in Indonesia at different times. Customary law has long

[9] Imam Syaukani and A. Ahsan Thohari, *Basics of Legal Politics* (Jakarta: PT. Raja Grafindo Persada, 2005), p. 59

existed and been in force in Indonesia, although it was only recognized as a legal system in the 20th century. Islamic law has existed in the Indonesian Archipelago since Muslims came and settled in the archipelago in the first Hijriah century or in the seventh/eighth century. Another opinion suggests that Islam arrived in the archipelago in the 13th century. 17 The first area to be visited was the North coast of Sumatra by forming the first Islamic society in Peureulak, North Aceh and Samudra Pasai. Then Western Law began to be introduced since the arrival of the VOC. In 1602, it was initially applied only to Dutch and Europeans, but with various regulations and efforts it was declared applicable to Asians and including the indigenous population in the archipelago.

According to Bustanul Arifin's analysis, even though the Dutch East Indies had left the archipelago, the atmosphere between these three legal systems was still in conflict. Because there are still legal experts who contrast the three and favor one over the other. This is certainly not good for the process of developing the desired national legal system. Apart from that, our epistemological perspective does not yet have what is called "national legal science" or "theorization of Indonesian law",[10] even though we really need it as a basis for formulating a national legal system that suits the characteristics of the Indonesian nation because it is impossible for us to always use theories. Western law. From this explanation it turns out that we do not yet have a representative national legal system. However, this does not mean that the ideal of the desired national legal system cannot be pursued. The government and campus have held several national and local scientific meetings and seminars attended by legal experts.

In this case, to support the will of the Indonesian nation as mentioned above, Arief Sidharta proposes that the national legal system/order must contain the following characteristics:

a. Having a national and archipelagic perspective
b. Able to accommodate group legal awareness, regional ethnicity and religious beliefs
c. As far as possible in written and unified form
d. Rational in nature which includes rationality, efficiency, rationality, fairness (redeijkheid), rationality of rules and rationality of rules

[10] Syatjipto Rahardjo, *National Legal Development and Social Change* (Bandung: Angkasa, 1988), p. 180

e. Procedural rules that guarantee transparency that enable rational review of decision makers by the government
f. Responsive to the development of aspirations and expectations of the community.[11]

In connection with the above proposal, the results of a seminar on national law at the Faculty of Law, Indonesian Islamic University, Yogyakarta, which was recorded under the title "National Legal Identity" recommends that the National Law that is being developed is:

a) Based on Pancasila (philosophical) and the 1945 Constitution (Constitutional)
b) Functions to protect, create social order, support the implementation of development, and secure the results of development.[12]

From the description above, it can be stated that the aim of Indonesian legal politics as stated by Philippe Nonet and Philip Selznick in their book "Law and Society in Transition: Toward Responsive Law" is to create a national legal system that is rational, transparent, democratic, autonomous and responsive to the development of aspirations. and expectations of masharà'at, not a legal system that is oppressive, orthodox and reductionistic.[13]

To realize the legal system in question, cooperation between various parties, especially the government, political parties and the community, is really needed, such as the compromise made in establishing the State Foundation, regarding the First Principle, namely "Belief in God with the obligation to implement Islamic Sharia for its followers" from the Jakarta Charter. dated June 22, 1945 as the Basic Concept of the State which is a process of a new "legal political" concept for the Republic of Indonesia, which was just proclaimed on August 17, 1945 with the Constitution 1945 as the basic law.

During the Independence Period (1945-1950), Indonesia entered a period of revolution following the defeat of Japan by allied troops, and the Dutch wanted to re-occupy the archipelago. By carrying out several battles, and succeeded in controlling several regions of Indonesia.

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[11] Arief Sidharta, *Reflections on the Structure of Legal Science, A Research on the Philosophical Foundations and Scientific Nature of Legal Science as a Foundation for the Development of Indonesian National Legal Science* (Bandung: Mandar Maju, 2000), p. 212

[12] Artidjo Alkostar, *National Legal Identity* (Yogyakarta, UII Faculty of Law, 1997), p. 296

[13] Imam Syaukani and A. Ahsan Thohari, *Basics of Legal Politics* (Jakarta: PT. Raja Grafindo Persada, 2005), p. 72

This triggered several rebellions in regions including those with "Islamic nuances", in this phase what was really phenomenal was the DI/TII movement which was spearheaded by Kartosuwirjo from West Java. Kartosuwirjo actually proclaimed his Islamic state on 14 August 1945, or two days before the proclamation of Indonesian independence on 17 August 1945. However, he gave up his aspirations to join the Republic of Indonesia. However, when RI's control over its territory declined further due to Dutch aggression, especially after the Puppet State of Pasundan was proclaimed under Dutch control, it proclaimed the establishment of the Islamic State of Indonesia in 1948. However, this was the trigger for the conflict which ended in 1962 and recorded 25,000 deaths, according to some researchers, more due to Kartosuwirjo's disappointment with the strategy of the central leaders in defending themselves from attempts at re-occupation by the Dutch, and not on the basis of what they call his "theological-political consciousness".

As a result of the aggression carried out by the Dutch and then establishing a State which was ruled by the Indonesian people, the United Nations (UN) intervened by carrying out several negotiations and agreements such as Linggarjati, Renville and the Round Table Conference (KMB) which gave birth to a Federal State with the United Indonesia Constitution. on December 27, 1949.

With the enactment of the RIS Constitution, the 1945 Constitution only applies as the constitution of the State of the Republic of Indonesia, which is one of 16 States in the United Republic of Indonesia.

If we examine the RIS Constitution itself, it is very difficult to say that it is a constitution that accommodates the aspirations of Islamic law. The preamble to this Constitution, for example, does not at all emphasize the position of Islamic law as in the draft 1945 Constitution agreed to by BPUPKI. Likewise with his body, it was even influenced by the liberal ideology that developed in America and Western Europe, as well as the formulation of the UN version of the Declaration of Human Rights. However, when the RIS became a state in the early 1950s, only three states remained, namely the State of the Republic of Indonesia, the State of Sumatra. East, and the State of Eastern Indonesia, one of the Muslim figures, Muhammad Natsir, proposed what became known as the "Integral Natsir Motion" as an effort to merge the three states. Finally, on May 19 1950, everyone agreed to re-form the Unitary State of the Republic of Indonesia based on the 1945 Proclamation. Thus, the RIS Constitution was declared invalid, replaced by the 1950 Provisional Constitution

(Moh. Mahfud MD, 2009: 47). However, if it is related to Islamic law, this change does not have a significant impact. This is because the unclear position is still found, both in the Preamble and the body of the 1950 Provisional Constitution, except in article 34 which has the same formulation as article 29 of the 1945 Constitution, that "The State is Based on Belief in One Almighty God" and the state guarantees the freedom of every resident to practice their own religion. , including article 43 which shows the state's involvement in religious affairs. After understanding some of the contents of the 1950 Provisional Constitution, there is an opportunity to formulate Islamic law in the form of statutory regulations or laws. This opportunity was found in the provisions of article 102 of the 1950 Provisional Constitution. Then this opportunity was used as an opportunity and utilized by representatives of Muslims in the People's Council (DPR), when submitting a draft law on Muslim Marriage in 1954. Although This effort later failed due to "obstacles" by nationalists who also proposed a National Marriage Bill. And after that, all political figures almost no longer thought about creating new legal material, because their concentration was focused on how to replace the 1950 Provisional Constitution with a permanent Constitution. However, this was accompanied by an uncertain political situation which had an impact on the rise and fall of the Cabinet, which was only a century old, one after another, so that what the Islamic figures wanted at that time was not achieved even though their position in the cabinet was very significant due to very strong government intervention. This can be proven from the rise and fall of Cabinets such as Natsir's First Cabinet (Masyumi Coalition, PSI and Small Parties) September 1950-March 1951, replaced by Soekiman's Second Cabinet (Coalition, Masyumi and PNI) April 1951-February 1952, then Wilopo's Third Cabinet (coalition of PNI, Masyumi and small parties until June 1953, Ali Sastroamijoyo's Cabinet IV (Coalition of PNI, NU and Small Parties) July 1953-July 1955 Cabinet V Burhanuddin Harahap (Coalition of Masyumi, NU, PSI and Small Parties) August 1955-March 1956 which succeeded in holding Democratic Elections, and was finally replaced by Cabinet VI Ali Sastroamijoyo (Coalition of PNI, Masyumi, NU and PKI and Small Parties).[14]

[14] Samudra Wibawa, *Countries in the Archipelago: From City States to Nation States from Modernization to Nation States from Modernization to Administrative Reform* (Yogyakarta: Gajah Mada University Press, Yogyakarta, 2001), p. 124-125

Then the struggle to replace the Provisional Constitution was realized in the General Election of the Burhanuddin Harahap Cabinet to elect and form a Constituent Assembly at the end of 1955. The assembly consisting of 514 people was then inaugurated by President Soekarno on November 10 1956. However, eight months before the end of his term of office, This assembly was dissolved through a Presidential Decree issued on July 5 1959. This is very important regarding the benchmarks for Islamic law in the event of this Decree, namely Its preamble states that "the Jakarta Charter of 22 June animates the 1945 Constitution" is an integral part of the constitution. This of course elevates and clarifies the position of Islamic law in the Constitution, in fact, according to Anwar Harjono, it is more than just a "historical document".

But what about at the application level? Again political factors are the main determinant in this matter. The manifestation of these academic conclusions is just a discourse if it is not supported by strong and convincing political bargaining power. This was illustrated in the Constituent Assembly session. During the session for approximately two and a half years, they had not agreed to enact a new Constitution because of disagreements about the basis of the state because two large groups were facing each other, such as the Islamic group and the Nationalist group, each of which proposed Islam and Pancasila as the basis of the State.[15]

5. Old Order and New Order eras

Perhaps it would not be too wrong to say that the Old Order was the era of nationalists and communists. Meanwhile, Muslims in this era need to bend a little in fighting for their ideals. One of the parties representing the aspirations of Muslims at that time, Masyumi and PSI had to be dissolved on 15 August 1960 by Soekarno, through Presidential Decree No. 200/1960 on the grounds that their figures were involved in the rebellion (PRRI in West Sumatra). Like Natsir, Burhanuddin Harahap, Syafruddin Prawiranegara. Meanwhile, NU, which later accepted Soekarno's Manipol Usdek (Moh. Mahfud MD, 2009: 148), together with the PKI and PNI then drafted the composition of the Mutual Cooperation DPR which had a Nasakom spirit. Based on that, the MPRS was formed which then produced 2 decrees, one of which was regarding legal unification efforts which must take into account the general realities of life in Indonesia. Even though Islamic law is one of

[15] Moh. Mahfud MD, *Legal Politics in Indonesia* (Jakarta: PT. Rajawali Persada, Jakarta, 2010), p. 130

the general realities that the majority live in Indonesia, and on that basis the MPRS Decree opens up opportunities to position Islamic law as it should be, but again the unclear boundaries of "attention" make this even more blurry. And the role of Islamic law in this era is again not getting the place it should.

Following the failure of the PKI coup in 1965 and the coming to power of the New Order, many Indonesian Islamic leaders had high hopes in their political efforts to place Islam as it should in the political and legal order in Indonesia. Moreover, the New Order released former Masyumi figures who had previously been imprisoned by Soekarno. But soon, this Order emphasized its role as defender of Pancasila and the 1945 Constitution. Even in early 1967, Soeharto emphasized that the military would not agree to efforts to re-rehabilitate the Masjumi party, this again put Islamic law at a crossroads.

Even though the position of Islamic law as a source of national law was not very clear in the early days of the New Order, efforts to emphasize its existence continued to be made. This was demonstrated by K.H Mohammad Dahlan, a minister of religion from the NU circle, who tried to propose a Muslim Marriage Bill with the strong support of Islamic factions in the DPR-GR. Although this attempt failed, it was then continued by submitting a draft formal law regulating judicial institutions in Indonesia in 1970. This effort then bore fruit with the birth of Law No. 14 of 1970, concerning the Principles of Judicial Power which recognized the Religious Courts as one of the bodies The judiciary is based in the Supreme Court. Through this law, according to Hazairin, Islamic law automatically applies directly as an independent law.

With the issuance of Law no. 14 of 1970, this optimism about building a rule of law is getting stronger, but this hope has turned into pessimism because the demands of judges and advocates to realize judicial power that is free from executive power cannot be realized because of the dualism of judicial power adopted in this law, namely that judges are independent. organizational, administrative and financial are under the executive, while in the judicial sector it is under the Supreme Court, however the spirit to support the rule of law remains strong.[16]

This was then followed by intensive efforts to compile Islamic law in certain fields. And these efforts bore fruit when in February 1988, Suharto as President

[16] Bambang Sutyoso and Sri Hartuti Puspitasari, *Aspects of the Development of Judicial Power* (Yogyakarta: UII Press Yogyakarta, 2005), p. 14

received the results of the compilation and instructed its distribution to the Minister of Religion.

With the approval of the Religious Courts Law by the Indonesian House of Representatives (DPR), it is an affirmation of the application of Islamic law which became increasingly clear when Law no. 7 of 1989 concerning Religious Courts was stipulated on 29 December 1989, and promulgated in State Gazette Number 49 dated 29 December 1989 by the State Secretary, is an important moment in the development of the national legal system, including for Muslims in Indonesia.[17] Because this further strengthens the position of the Religious Courts as one of the independent implementing bodies of judicial power in Indonesia in enforcing Islamic law for those seeking justice in accordance with Islamic law for the Islamic community of Indonesia which concerns civil cases in the fields of marriage, inheritance, wills , grants, waqf and alms. In this way, the Indonesian people, the majority of whom adhere to the Muslim religion, have the widest possible opportunity to implement the provisions of Islamic law which are religious teachings in accordance with the provisions contained in article 29 paragraph (2) of the 1945 Constitution.

The compilation of Islamic law has been designed in accordance with the main authority of the Religious Courts and has been well and unanimously accepted by Ulama and Islamic Law Scholars throughout Indonesia in a workshop held in Jakarta from 2 to 5 February 1988, consisting of three books, namely Books I concerning marriage law, Book II concerning inheritance law and Book III concerning waqf law. Then through Presidential Instruction no. 1 of 1991 dated 10 June 1991 has been established as a guideline for Government Agencies and Islamic communities who need to resolve problems in these three areas of law. Which was then followed up by the Minister of Religion with Decree No. 154 of 1991 dated July 22 1991, the contents of which are in order to implement the Presidential Instruction, requesting all Religious Department Agencies including the Religious Courts, and other relevant government agencies to disseminate the Compilation of Islamic Law in question. In the second dictum of the Decree of the Minister of Religion regarding the implementation of the Presidential Instruction, it is also stated that the entire Institution environment, especially the Religious Courts (MDA), must implement the

[17] Mohammad Daud Ali, *Islamic Law: Introduction to Legal Science and Islamic Legal Order in Indonesia* (Jakarta: PT. Raja Gafindo Persada, 2013), p. 282

Compilation of Islamic Law in addition to other statutory regulations in resolving problems in the fields of marriage law and inheritance. and endowment.

6. Era of National Legal Reform and Development

This era saw the rise of democracy and freedom that occurred in all corners of Indonesia along with the fall of Soeharto, who was the ruler of the New Order for approximately 32 years. After a long journey, in this era at least Islamic law is starting to take its place slowly but surely. The Birth of MPR Decree No. III/MPR/2000 concerning Legal Sources and the Sequence of Legislative Regulations, increasingly opens up opportunities for the birth of legal regulations based on Islamic law. Especially in Article 2 paragraph 7 which confirms the accommodation of regional regulations that are based on special conditions in a region in Indonesia, and these regulations can override the application of general regulations.

Moreover, in addition to increasingly clear opportunities, concrete efforts to realize Islamic law in the form of statutory regulations have produced real results in this era. One proof of this is the publication of the Law on Regional Government and the Special Autonomy Law and the Special Regions Law. As with Law Number 32 of 2004, concerning Regional Government, what is of great concern is the issuance of Law No. 44 of 1999 concerning the Implementation of the Special Provinces of the Special Region of Aceh and Law no. 18 of 2001 concerning Special Autonomy for the Special Region of Aceh Province as Nangroe Aceh Darussalam Province. Although these two legal products from the Nangroe Aceh Darussalam Provincial Government do not apply nationally, they have changed almost the entire legal and political order in Aceh, and it is even suspected that they will have a significant impact on the central government.[18]

In the implementation of the Specialties of the Province of Nangroe Aceh Darussalam, there are four special features that this region has as follows, (1) Application of Islamic law in all aspects of religious life, (2) Use of educational curriculum based on sharia without ignoring the general curriculum, (3) Inclusion of traditional elements in the structure Village Government and, (4) Recognition of the role of Ulama in determining regional policies. To follow up on the law regarding the Implementation of the Provincial Specialties of the Special Region of Aceh, the

[18] Imam Syaukani and A. Ahsan Thohari, *Basics of Legal Politics* (Jakarta: PT. Raja Grafindo Persada Jakarta, 2005), p. 97-98

Nangroe Aceh Darussalam Provincial Government has issued four Regional Regulations (Perda) or Qanun. The several Qanuns referred to are, respectively, Qanun No. 3 of 2000 concerning the Organization and Work Procedures of the Ulama Consultative Assembly (MPU), Qanun no. 5 of 2000 concerning the Implementation of Islamic Sharia in Aceh, Qanun no. 6 of 2000 concerning the Implementation of Education and Qanun no. 7 of 2000 concerning Implementation of Customs.

In connection with the contents of several Qanuns, the implementation of Islamic Sharia is so broad that it includes laws regarding matters of worship, civil and criminal justice. In relation to justice (qadha), on 1 Muharram 1424 Hijriah coincided with 4 March 2003 through Presidential Decree no. 11 of 2003, the Government has inaugurated the establishment of the Syar'iyah Court, so that it can implement Islamic law in a kaffah manner in the Nangroe Aceh Darussalam Province area, and this Syar'iyah Court will later handle civil cases (ahwal al-syakhshiyyah) and criminal cases (jinayah), this is in accordance with the mandate of Qanun no. 10 of 2002, and is also in accordance with the Qanun of Nangroe Aceh Darussalam Province concerning the Implementation of Islamic Sharia Number 11 of 2002.

Thus, in this era of reform, wide opportunities are open for the Islamic legal system to enrich the treasures of legal tradition in Indonesia. We can take reform steps, and even form new laws that are sourced and based on the Islamic legal system, to then be used as positive legal norms that apply in our National law.

C. NATIONAL LEGAL DEVELOPMENT

The position of Islamic law in the development of national law went through quite a long struggle and only came to light after the Speech of the Minister of Justice of the Republic of Indonesia, Ali Said at the Opening Ceremony of the National Civil Law Reform Symposium in Yogyakarta on December 21 1981 which explained that in addition to customary law and ex-Western law, Islamic law, which is one of the components of the Indonesian legal system, became one of the sources of raw material for the formation of national law, then this policy was explained in detail eight years later (1989) by the Minister of Justice Ismail Saleh, but before knowing the place of Islamic law in the development of national law, we must first follow the policy steps for developing national law through three dimensions, among others, (1) The maintenance dimension, namely maintaining the existing legal order even though it is no longer in accordance with the development of society. at. This dimension is to avoid a legal

vacuum, this is a logical consequence of Article II of the 1945 Constitution Transitional Regulations, (2) The renewal dimension is an effort to further improve and perfect the development of national law, this dimension is in addition to the formation of new laws, efforts are also being made to improve the existing statutory regulations. exists so that it is in accordance with current needs, (3) The creation dimension, namely the dimension of dynamics and creativity, in this case the dimension of creating new legislative instruments, which previously did not exist.

Because national law must be able to protect and provide an umbrella for the entire nation and state in all life, according to the Minister of Justice, in planning the development of national law, it is mandatory to use one national insight which consists of three aspects which together constitute a "single trilogy" which cannot be separated from each other. namely: "National Insight, Archipelago Insight, and Bhinneka Tunggal Ika Insight".

From the perspective of national insight, the national legal system must be focused on the orientation of the nation's interests which reflects the ideals of law, legal objectives and legal functions and is based on the characteristics and goals of national and state life. So the interests of the nation here are meant to be the interests of the entire Indonesian people who are united in national and state life.

Indonesian insight is intended to have a unified national law that leads to legal unification, for this reason it is necessary to create a climate that encourages the growth of awareness of life under one legal umbrella for all groups of the Indonesian community.

Based on these two insights, even though legal unification is the goal of developing national law, for the sake of justice for the national law that will be developed, the differences, background, social culture and interests of Indonesia's benefit groups, even the needs of certain groups and classes must be taken into account by the state, so that these benefit groups receive equal/fair and equitable treatment. Therefore, in addition to the archipelagic insight and national insight, it needs to be complemented by the "unity in diversity insight".

In relation to Islamic law in particular, it cannot be denied that the majority of the Indonesian population adheres to Islam, according to the Minister of Justice (Ismail Saleh) there should be Islamic law which substantially consists of two areas, namely (1) the area of worship, and (2) the area of muamalah. This means that the legal regulations relating to the field of worship are detailed, whereas in the field of muamalah or

regarding various kinds of life in society, they are not detailed, meaning that in this field only the principles are regulated, while the application and development are left to state/government administrators or Ulil 'Amri. It should be noted that because Islamic law plays an important role in fostering social order among Muslims and influences various aspects of life, what the government must take is to seek the transformation of Islamic legal norms into national law as long as they do not conflict with Pancasila and the 1945 Constitution (Minister of Justice Ismail Saleh). And it is relevant to the legal needs, especially of Muslims, because there are quite a lot of universal principles contained in Islamic law which can be used as material for drafting national laws.

D. CLOSING

In the development of Indonesia's benefit law, which is predominantlym Muslim, it must be caring and full of openness, which will inevitably be colored by the demands of Muslims who want to uphold Islamic Sharia. For the author, this idea certainly deserves support. However, while providing support, it is also necessary that efforts like this be carried out intelligently and wisely in order to achieve the great goals and aspirations of this nation.

Because upholding what is ma'ruf must also use steps that are ma'ruf. Besides that, the awareness that the struggle to enforce Islamic Sharia itself is a long and winding road, in accordance with its sunnatullãh. Because it requires patience in carrying it out. Because without sufficient patience, enforcement efforts will only turn into anarchic actions which are not in line with Islamic prosperity.

The process of "familiarizing" this nation with Islamic law, which has been carried out so far, must continue to be carried out with patience and wisdom. Besides, of course, efforts to strengthen the strength and political bargaining power of Muslims need to be increased. Because it cannot be denied that in a democratic system, political bargaining power greatly determines the success or failure of a goal and ideal.

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