



POLITICAL CONFIGURATION OF ISLAMIC LAW IN LEGAL DEVELOPMENT IN INDONESIA

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ABSTRACT

Indonesia's multicultural society influences legal policy in the development of the country from philosophical, cultural, social, and religious aspects. The development of national law as a positive social manager that can predict the future effects of the law. Multidisciplinary became a crystallization in the formation of national laws. The current development of customary law commonly referred to as *al-ādah al-muhakkamah* strongly supports national law as a source of law and is used by the Indonesian Islamic community along with customary law as its legal basis. Both are designed to provide legal benefits for the Indonesian people. Islamic law in the development of national law is the answer to the democratization of various sources of law in Indonesia. That is, national sources of law need to pay attention to the basic philosophy of Islamic law, which can answer and solve substantive and formal legal problems as the basis for the development of national law. The formalization of Islamic law in the context of policy development of law or the development of Islamic law (legal structure) in the development of national law is not sufficiently limited to mere formalization, but how its nature and content. This study focuses on the synchronization of Islamic law and national law to create a national law that is in harmony with the existing law in society through normative legal investigation methods and comparative legal approaches.

Keywords: *Political configuration; Legal development; Legal politics; Islamic law.*





1 INTRODUCTION

The nationalist nature of the legal order of a nation must reflect the ideals of law, its legal goals, and functions, be directed to the nature and purpose of life of the nation and state and be directed towards the adjustment of national interests. Therefore, the interests of the people here are said to be the interests of all Indonesian people who are united in the life of the nation and state (Mardan, 2019). Nasantala's perception is said to have a single national law that leads to legal unification. Creating a climate that fosters awareness of living under one legal roof for all levels of Indonesian society. Departing from these two views, although legal unification is the goal of national legal development, for the sake of fairness in national legal development, differences, backgrounds, socio-culture and the interests of Indonesian social groups and certain groups must be considered by the state so that their needs are considered, and these community groups are treated equally / equally and equally. Therefore, in addition to the insight of the archipelago and state, the insight of "unification in diversity" needs to be supplemented (Munir, 2014).

Islamic law to become a formal law in Indonesia, not separated from polemics, especially the struggle between Islamic law and Western law and Customary law, has reaped many dilemmas in the policy (Islam, 2018). The feud between politics and law is very strong in its supremacy. When viewed from its development, there are three intersections in Islamic law in Indonesia (Kushidayati, 2014). First, coming from a group that wants the implementation of Islamic law in Indonesia to regulate its adherents, called a traditional group, namely, a group that thinks that religion regulates all aspects of life, then Muslims must practice the rules of Islamic law, including in-state life. Second, the moderate group comes from a group that wants uniformity and legal unity. Third, secular groups that want the institutional invalidation of Islamic law, this group argues that religion only regulates individual affairs with their god in the form of ritual worship, in no way regulating concrete social aspects, including the rule of law. The relationship between the Gnostics is very strong influencing government policies, both in the application and absorption of Islamic law.





Islamic politics and law are two sides of a coin that cannot be separated in an Islamic society (Wanto, 2017). Islamic law without political support is difficult to implement, and vice versa, politics that ignore Islamic law will result in chaos in the order of society (Muhazir, 2021). This is believed to be true by those who already have legal awareness, so practicing and fighting for Islamic law in a country whose majority of the population is Muslim, is a must for Muslims, either through legal-formal channels or substantive roads. In Indonesia, the implementation, legal ideals, and legal consciousness – can't help but – are also shaped by the socio-political configuration that develops in its society.

Its relationship with Islamic law is undeniable. According to the Minister of Justice (Islam Surrey), Islamic law is essentially two areas: (1) worship and (2) Muamara, because the majority of the Indonesian population is Muslim. This means that the relevant laws and regulations in the field of worship are detailed, while in the field of Muamara, or related to various forms of people's life, they are not described in detail. That is, only the principles are regulated in this area, and their application and development remain open/to government officials or Ulil' Amri. Islamic law plays an important role in advancing the social order of Muslims and affecting various aspects of their lives, so the government will take Islamic law as long as it is by Pankashira and the 1945 Constitution (Minister of Justice). incorporating norms into national law. Ismail Saleh). This is particularly relevant to the needs of Islamic law since Islamic law contains a set of universal principles that can be used as a source for designing national laws.

From a formal historical and juridical point of view, the existence of the Republic of Indonesia is a country that was once colonized by the Dutch, British and Japanese. Each carries a different type of law and time-lapse, and therefore has and will have different implications. From here we will be able to understand the existence of a plurality of legal systems prevailing in Indonesia because of equivalence (Syatar, 2019). Islamic law as an inseparable part of the teachings of the religion (Islam) entered and became part of the norms of society since the entry of the teachings of Islam itself, namely starting from the 1st century Hijri or the 7th-8th century Miladiyah. "This Religious Law came to Indonesia along with the presence of religion". This belief is what makes Islamic law apply in the life of Indonesian society (Lon & Widyawati, 2021).





With the birth of the compilation of Islamic Law and the promulgation of Law No. 7 of 1989 concerning Religious Justice. Moh. Mahfud MD (Awaliah et al., 2021) in his dissertation regards a non-Democratic state. The political configuration of the New Order regime, according to Mahfud, contains authoritarian and democratic features at the same time. Its authoritarian features, however, appear to be more prominent.

Sociologically, it is recognized that the political reality of the New Order influences the forms of religious understanding in Indonesia, especially for Islam. The establishment of the Compilation of Islamic Law, which was guided by the Ministry of Religion of the Republic of Indonesia and the Supreme Court of the Republic of Indonesia, is a form of religious understanding desired by the new order of legal politics (Jama, 2018). What kind of Islamic law is needed for the main projects of the new order is the starting point for the development of Islamic thought and the establishment of Islamic law in Indonesia. the ideology of the new order included the socio-religious change, and the modernization of "traditional" religious values into "modern" religious values, changing the traditional mentality to the modern one. Included in this part of the program is to carry out the unification and codification of national law as a starting point for the legal politics of the new order.

Departing from some of the above thoughts, in the end, encouraging the author to formalize Islamic law into the development of national law in the context of legal development policies or the construction of Islamic law (legal building), is not enough just to be limited to pure formalization.

2 METHODS

The survey method used is qualitative. The procedural model is a research method that generates written or verbal descriptive data of many people and observes the behavior of people so that normative comparison methods are used. This study talks about politicians/rulers, or in the form of phenomena. The approaches used in this study are: First, the Islamic law approach. Second, legal policy. Third, is the development of national law.





In this case, the type of research that the researcher uses is based on the use of some of the above perspectives. Depending on the field of study, this type of research is categorized as legal research. The Islamic Law Policy Study is a study that explains the problems of Indonesian law to find and interpret new knowledge created by former scholars. b. Depending on the location, this type of study is classified as a literature study. c. This type of research is categorized as "developmental research" according to its purpose and aims to develop existing knowledge. So, according to the paradigm, this type of study belongs to normative comparative studies. In terms of its application, researchers use several methods related to the subject matter of this study. These include, first, observations by researchers who investigate political behavior or personality during government. Second, hold group discussions involving people who have sufficient abilities and knowledge in the field of research. Third, by analyzing the content. Most of the data generated by qualitative research are encoded and analyzed only by the sharp eyes and hearts of researchers. Alternatively, you can do so by using computer software.

2 DISCUSSION

2.1 HISTORY, THE POLITICAL DEVELOPMENT OF ISLAMIC LAW

The path to the national legal system with the Islamic legal system is inseparable from the legal politics that have developed since Islam entered the archipelago (Sulasman, 2017). Historically and sociologically, Islam entered the archipelago (Indonesia) from the city of Medina Al-munawwarah in the 13th century AD with the rapid development of Islam, according to some conclusions of Islamic historians (Wahyudin, 2020). But there is another opinion that Islam entered and developed in Indonesia from the VII century AD. In other words, there was a debate in determining the beginning of the entry of Islam in Indonesia, considering that each opinion has its reasons and debates (Sukardja, 1995).

In addition, based on the facts and realities of Islam in Indonesia, those who claim that the process of entering and entering Islam in Indonesia comes from several entrances





not just from one door, according to the nature of the Indonesian archipelagic state (Karttinen, 2019). It can be seen from one island to another, from one region to another, from an Islamic perspective, understanding, and color. As concrete evidence, this distinction begins in the realm of mah worship and extends to social and full worship or its branches.

This has been taught by Middle Eastern preachers with Da'i backgrounds or traders or merchants since the beginning of the existence of Islam and the beginning of its development in the archipelago (Indonesia) (Fossati, 2019). The subsequent dissemination of Islam or Islamization is studied in various ways through institutions, marriage ties, educational institutions, existing Tariqa institutions, arts, and public institutions developed by the Islamic community itself, socialized and developed. It is equally important that Islamization is supported by political forces (Sukardja, 1995).

The course of legal development policies, including the development of Islamic law into national law, cannot be separated from the basic guidelines of the constitution (Islam, 2018). Islamic law comes from the positive side (*siyāṣah*) from its main source, Sharia (Islamic law) (Naro et al., 2020) as the proposal of Nakuru, and Fiqh (Islamic law) as the proposal of Aciri as the result of human Ijtihad, which is considered the norm or rule of positive law. Both have been developed and formalized in the legal order of the country.

The politics of the development of Islamic law can be seen from various angles and perspectives (Lohlker, 2021). Improvements in education (in a broad sense) and the political system are necessary to establish and strengthen the status of Islamic law in the national legal system. In addition, from the perspective of economic development, the policy of development of Islamic law can be said to be a very important substance that needs to be developed and strengthened its existence. Indeed, the Islamic economy, which has existed since the beginning of the time of the Prophet Muhammad PBUH (Husni, 2022), now feels and recognizes the importance of being involved in the economic development of Muslims and the public. The political power of the law greatly influenced the existence of the Islamic economy. Islamic economics should not only be regarded as an alternative to traditional economics but should be placed in the same position and treated equally.





In the development of the world, it does not mean that the legal development of a country is inseparable from the world economic power initiated by capitalist countries, as well as the power of NGOs (non-governmental organizations) or non-governmental organizations. the organization of government in the world, is an undeniable fact. The power of the state to form and direct legal policies cannot be enjoyed alone but must develop in line with global development.

The Islamic economy essentially upholds the principles of fairer and equitable trade and trade for profit, avoiding fraud and exploiting the vulnerable, by not using much energy for others(Salim, 2021). worth it. With the legal policies provided and developed by Islamic Sharia, the Islamic economy is a truly just matter.

It is interesting as the political signs of the development of Islamic law into national law are described as the politics of national law, not just formalization. Also, when it is a policy to develop Islamic law into a national legal system known as Sharia, there is a harmony between the formalization (form) and material (material) aspects that are part of the national legal system.

3 CONCEPTUALIZATION OF ISLAMIC LAW INTO THE NATIONAL LAW OF THE 1945 CONSTITUTION

The 1945 Constitution states that Indonesia is a country of law that is not solely based on power (*machtstaat*). This means that the law has a very important and decisive role in realizing the ideals of the Indonesian state. This also implies the importance of Islamic law policy in one country of the Republic of Indonesia.

Article 2 of the Provisional Provisions of the 1945 Constitution states that "all existing state bodies and regulations are still in force, as long as no new ones have been held according to this Constitution". This means that Islamic law is constitutionally applied as it was before independence, and it is not easy to change or change the law, and it is necessary to justify the continuation of the law of colonial products, even temporarily. The formulation of this rationale gave a clear impetus to the Indonesian government to immediately create legitimate products that were by the 1945 Constitution, as well as at





the same time all colonial legitimate products, especially the 1945 Constitution. Abolishing those that are not by the 1945 Constitution. is a colonial product whose laws must be chosen by the Indonesian government. Be careful if any legitimate products are retained, as they are likely to have universal value among the legitimate products of the colonial era to maintain their effectiveness in Indonesia. This constitutional foundation is a mission through legal policies rooted in the philosophy and culture of the Indonesian nation, which is not easy because it concerns many aspects (Moh. Mahfud, 1999).

From a legal point of view, the Unitary State of the Republic of Indonesia declared on August 17, 1945, is the "successor" of the Dutch East Indies, not Majapahit, Sriwijaya, or the successor of the past archipelago kingdoms. The provisions of Article 2 of the Provisional Provisions of the 1945 Constitution mean that the existing laws and regulations that are still in force are not regulations of the Majapahit or the Sriwijaya Kingdom, but laws and regulations of the Dutch East Indies. Kingdom. Nor is it a continuation of the Japanese military government regulation as the last ruler before the establishment of the Republic of Indonesia.

The existence and enforcement of Islamic law in Indonesia have been granted constitutional status for three reasons. First, philosophical reasons. Islamic teachings are life guidelines, and moral and legal ideals for the majority of Indonesian Muslims and play an important role in the development of the basic norms of Pancasila. Second, sociological reasons. The historical development of Indonesian Muslims shows that legal thoughts and opinions based on Islamic teachings are always up to date. And third, the legal basis provided for in Articles 24, 25, and 29 of the 1945 Constitution provides a place for formal enforcement of Islamic law.

In general, the position of Islamic law in Indonesia is not only contained in Article 20 or 24 of the 1945 Constitution but also expressly stated in Article 29 (1) of the 1945 Constitution. The political development of national law, and the position of Islamic law, can be found in many other rules such as:

First, the Provisions of MPRS II / MPRS / 1960 stated that religious factors must also be considered in the improvement of marriage and inheritance laws. However, at the beginning of the New Order Government (March 27, 1968) (when the MPRS II/MPRS/1960 Law ceased to apply), there was not a single law in the field of marriage





and inheritance. The development has drawn up marriage registration rules, a marriage bill, and a complete inheritance bill.

Second, the outline of national policies and a five-year development plan in the field of law, Islamic law is one of the components of the Indonesian legal system, and together with customary law is one of the raw materials for the formation of Indonesian society. It emphasizes that. Old Western laws and laws.

Third, Chapter IV.A.2. The National Policy Guidelines and the National Long-Term Development Plan (RPJPN) 1999, the reform era, stated that the direction of national legal policy is generally based on common law, religious law (in this case Islamic law), and Western law. Emphasized.

Fourth, the National Long-Term Development Plan (RPJPN) 2005-2025. It is explained that the development of domestic law requires compliance with legal approvals in society, and the formation of domestic law requires the embodiment of sociological values by the cultural values prevailing in the rice paddy society. That is, the formation of state law should relate to the laws that live in society. Islamic law is a law that exists in society, is accepted by most citizens of the Republic of Indonesia, is part of the Indonesian legal system, and is one of the raw materials for the formation of domestic law. For this reason, the state of law must follow constitutional procedures and be in line with the norms and ideals of Indonesian law.

Looking at the position of Islamic law from such a firm political point of view, we can see the following. First, the role of the Islamic method is to fill the gap in positive law. This is evidenced by the government's entry into positive law for its supporters through the ratification of several laws and regulations. Based on this, Islamic law bridges the gap in Islamic law (*lex specialist*) in the fields of family law, inheritance law, waqf, and zakat. Second, the role of Islamic law contributes to the source of value in the development of domestic law. The law applies to all Indonesian citizens (*lex generalis*). As a source of value for the established rule of law, Islamic law is not limited to the field of civil law but can also be applied to other areas of law such as criminal law, constitutional law, and state administrative law. For this reason, Islamic law acts as a source of law (Yusuf, 2021).





4 THE POLITICS OF ISLAMIC LAW IN LAW BUILDING IN INDONESIA

In the concept of positive law, the state of the law is the result of the empowerment of competent power. Moreover, in another view, if a law is based on another priority regulation, then the law is declared a positive law. Conversely, if the standard formulation consists of a linear formula and a quadratic formula, then the nature of the law is positive.

The general meaning is that you cannot legally oppose the law or legal conduct. From a positivist point of view, this is what is called legitimate, and the ordinance is binding. But what does it mean, does it mean that you must obey it? The situation is similar in the legal context. A legal entity should not make independent moral judgments regarding the validity of the law or disregard valid legal documents. In the broader context, the meaning of obligations is not yet clear, but one of them can be interpreted as legally binding, but is there a moral obligation? Whether the applicable legal requirements correspond to the requirements of morality.

The acceptance of Islamic law as a product of positive legal legislation is in principle a political product. Meanwhile, Daniel S. Lev explained that the most important thing in court proceedings is the concept of a political power structure (Moh. Mahfud, 1999). That is, in the process of legislative debate, various political forces will inevitably appear in the legislative product. However, it should be noted that the aggressiveness of the provisions of Islamic law (*siyāsah*) within the framework of Sharia and Fiqh does not obscure the meaning and essence of Islamic law itself.

Satjipto Rahardjo (Aulia, 2018) explained that the law is formed by certain interests because it is a means of the decision or political will. Manufacturing is a place of controversy and conflicts of interest. Moreover, the institutions and institutions that produce it reflect the composition of power and interests that exist in society.

The specificity of Islamic law in the field of sharia may require state support under certain circumstances to strengthen its existence. Even in the Muamara region, Islam is widespread with the intervention of state powers to take precautions. However, the regulation of the state in the form of positive law should be consistent and not deviate from the provisions outlined by the sharia and the thinking of jurists.





As a sharia provision that creates sturdiness and certainty about what is allowed or prohibited, positive legal norms must, from a formal point of view, invalidate the provisions and levels required by Islamic Sharia.

Returning to the development of Islamic legal values and principles that exist in Indonesian society, of course, it is inseparable from the development of law long before independence which is the inner territory of every society. Islamic law seems to be adaptable to the environment of society, which is called customary and then common law. From his work, C.W.L., Van den Berg gave rise to a theory called Reception of the Complex, which claims that Indonesian Muslims are fully Islamic and united as a whole. Islamic law has been applied and accepted throughout the life of the people of the archipelago. This affirmation can be proven by the unity of Islamic values and life values in society. In the Minangkabau community of West Sumatra, these provisions are known as "*Adat Bersendikan Shara*" and "*Shara Bersendikan Kitab*" (Tohopi, 2012). That is, in a certain order prevalent in society, it will be respected if it is indecisive and violates the values espoused by Islamic law.

On the other hand, in the development of Islamic law into the legal order, it sought to be guided or diverted and even clashed with secular ideas and ideologies. This is evidenced by the emergence of the theory of the reception of Snouk Hurgronje (Rohmana, 2018). This theory was later expanded and developed by Van Vollen Hoven and B. Ter Haar. Although Snouck Hurgronje recognized that Islam is a religion of rights in the true sense of the word (Islam is a religion of rights in the true sense of the word). However, thanks to the reception theory developed by Snouck Hurgronje, was able to influence the policy of the Dutch East Indies government. There, his famous statement that Islamic values and Islamic law are theoretically accepted is often violated in practice. According to Snouck Hurgronje (Khotimussalam, 2019), the Indonesian Islamic community (Nusantara) follows customary law, not Islamic law. Common law includes elements of Islamic law that apply to this society. In other words, the applicable law is no longer Islamic law, but general law.

One that deserves recognition is the liberalization of legal policies and policies developed by the government to adhere to Islamic law in the legal system through the legislative process. However, it should be noted that there is no opportunity or ease in the





legislative process, and Islamic law itself has lost its basic meaning under Islamic Sharia. This vigilance must be maintained so that the formal legislative process does not change the actual legal entity.

For this reason, the most important thing is that Islamic law can compete with other legal systems, which can strengthen and sustain the construction of national law. According to Padma Wahjono quoted by Alamsjah Ratu Prawiranegara, two conditions are needed to replace Islamic law with national law. first courage. Without courage, not all ideas will work. Second, all ideas must be contained within the framework of Pancasila. Pancasila provides an opportunity to enforce the majority law without offending Islam much. The first precept of Pancasila, the One True Godhead, is nothing but tawhid. Therefore, we need people who are religiously and politically intelligent. And our theme must always be to strengthen the nation based on Pancasila (Prawiranegara, n.d.).

The above statement agrees that three conditions must be met to carry out the renewal of Islamic law. 1. High level of education and openness of the Islamic community. 2. Among Muslims, there is the courage to make an unconventional choice from a pair of choices (between revelation and reason, between unity and diversity, between idealism and rationalism, between stability and change). 3. Understanding the socio-cultural and political factors behind the birth of a particular product in Fiqh is considered to understand the peculiarities of the product in legal thinking. Therefore, if different elements of specificity are found in different places and times, then the product of legal thought itself needs to be modified. Therefore, the dynamism of Islamic law can be strengthened and continued to be developed. As Anna explained, religion is an individual right, so the Word of God (religion) has the same freedom in the State Constitution on this issue. If you are forced into the country's constitution without accepting the other party, conflicts will inevitably arise (Taufiq, 2018).

Some Islamic laws are included in the pattern of relations between Islamic law and national law meaning "Islamic law" which is formalized into positive law (Yusuf, 2021), namely:

1. Islamic law is only for Muslims:
 - Law No. 7 of 1989 jo Law No. 3 of 2006 and Law No. 50 of 2009 concerning Religious Justice;





- Law No. 17 of 1999 jo Law No. 13 of 2008 concerning the Implementation of Hajj;
 - Law No. 38 of 1999 jo No. 23 of 2011 Law No. 38 of 1999 concerning Zakat Management;
 - Law No. 41 of 2004 waqf;
 - Law No. 21 of 2008 on Sharia Banking
 - Presidential Instruction No. 1 of 1991 jo Decree of the Minister of Religious Affairs No.154 of 1991, Compilation of Islamic Law (KHI).
2. The implementing rules of Islamic law become national law.
- Act. No. 1 of 1974 concerning Marriage, along with implementing regulations, namely PP. No. 9 of 1975. Then PP No. 45 of 1990 concerning Procedures for Divorce n for Civil Servants;
 - Act. No. 11 of 2012 concerning the Juvenile Criminal Justice System;
 - Law No. 32 of 2004 on Domestic Violence (KDRT);
 - Law No. 11 of 2006 concerning the Government of Aceh, a judicial institution specifically in Nanggroe Aceh Darussalam Province (NAD) as part of the national judicial system is carried out by the Syar'iyah Court.
 - Law No. 23 of 1990 concerning Health is an Islamic Law that is included in national law and applies to every citizen of the Republic of Indonesia.

5 CONCLUSION

The Unitary State of the Republic of Indonesia is not an Islamic state or a secular state. Political realities show that Indonesia is constitutionally Pancasila. Therefore, as an Islamic institution, it is officially impossible to fully apply the principles of Islamic law, especially in a formal form.

Considering that Indonesia is a multidimensional population country, the law is a political product. Therefore, legal policy better explains the impact of politics on the law or the impact of the political system on the development of law. Islamic sharia policy is a political effort to uphold Islamic sharia as one of the laws that live in society, considering





aspects of diversity (plurality). And in the process of implementing the law, it is necessary to comply with the rules of national guidelines, among others:

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