

Transformation of Islamic Law into a Political Historical Law Foundation

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Abstract. *This research aims to analyze the transformation of Islamic law into the foundation of law formation in Indonesia from a historical and political perspective. By using the approaches of Neo-Receptie In Complexu Theory, Maqasid Shari'ah, Max Weber's Socio Legal, and Constructivist Ijtimai Theory, this research identifies the dynamics of political configuration between governments and their influence on the formalization of Islamic law in Indonesia. The main focus is on how Islamic sharia changes from symbolic to substantive in the national legal framework. The method used is qualitative analysis with a historical and political approach, integrating legal and social theories. Literature and document studies were also involved for an in-depth understanding of the topic. The results show that the formalization of Islamic sharia in Indonesia is strongly influenced by the changing political configuration throughout history, starting from the era of Islamic kingdoms, colonialism, to reform. The shift from symbolic to substantive Islam allowed for wider participation of Muslims in socio-political life, reflecting a shift towards inclusiveness without threatening diversity and national unity. The transformation of Islamic law into positive law in Indonesia is the result of a dynamic process influenced by historical and political contexts. Constructivist Ijtimai Theory, with its focus on inclusive dialog and community participation, provides a framework for understanding and promoting this transformation. The research suggests that to achieve substantive Islamic political goals, Islamic political activists should adopt an inclusive approach, utilizing all channels including the bureaucracy in voicing their political aspirations.*

Keywords: *Bureaucracy; Inclusivity; Islamic; Transformation.*

1. INTRODUCTION

Indonesian Muslims practice some of their religious laws, while others are subject to Westernized "state laws". In its historical context, efforts to uphold Islamic sharia in the midst of the Pancasila state have always been characterized by tensions and exhausting power negotiations, both with other elements in the nation and with the state itself. The dialectic between Islamic sharia and the political power of the

Pancasila state continues in this area, where the political law of a state plays a central, sometimes even dominant, role in determining the application of Islamic sharia.¹

So far, it appears that the implementation of Islamic law is strongly influenced by the political interests of the ruling party, which is inseparable from the political and social context of its implementation. The political vision of the ruler is very instrumental in determining the political direction of the Islamic law that was born. Various laws and regulations containing Islamic sharia that have emerged in Indonesia are products of agreements or compromises of various political forces according to the socio-political context when they were made. From here it is interesting to discuss what legal politics are behind the various laws and regulations containing Islamic sharia? What exactly is the will or direction of the law makers regarding the legal products containing Islamic sharia? How have changes in the political landscape between the various governments, which have been in power in Indonesia, influenced the implementation of Islamic sharia? Has the enactment of Islamic sharia so far only been the will and desire of the ruler (*top-down*) or has it involved the participation of the people at large (*bottom-up*)? Is the formalization of Islamic sharia merely a fulfillment of political promises or is it based on strong religious awareness and conviction? This research was conducted to try to explain the phenomenon of the formalization of Islamic law. With the research title Formalization of Islamic Law in the Perspective of Maqhasid As-Syari'ah.

2. RESEARCH METHODS

This research uses a qualitative descriptive method, where the method is a series of writing steps that produce data that can be described from certain problems in the form of written problems and phenomena that are observed directly.² The type of data used is secondary data sourced from journals and books related to the research topic. These data were obtained using library research techniques, namely data collection methods by exploring the theories of several previous studies that have relevance to the research being conducted.³ The data analysis technique used has three stages, namely data reduction, data display and data verification. The interactive data analysis model by Miles and Huberman with these stages focuses on data or information related to the Position of Fatwa as a Solution to Muslim Problems in Indonesia.

3. RESULT AND DISCUSSION

3.1 The State of Islamic Sharia in Political Powers in the Archipelago Before the Birth of the Republic of Indonesia

Islam has long been present in the archipelago long before the birth of the Republic of Indonesia. Even before the arrival of European colonialism, Islamic kingdoms had emerged as a political force that Europeans had to deal with. Each of these Islamic kingdoms had implemented Islamic religious regulations in their respective countries. Until finally the Islamic kingdoms were controlled by the European colonial

¹ Marzuki Wahid and Rumadi, (2001), *Fiqh Madzhab Negara: Kritik atas Politik Syariat Islam di Indonesia*, Yogyakarta: LKIS, p. 1-2.

² Farida, A. (2021). Analisis Mekanisme Jual Beli Mata Uang (Al-Sharf) Menurut Fatwa DSN-MUI No. 28/MUI/III/2002. *Malia* (Terakreditasi), 12(2), 137- 150. <https://doi.org/10.35891/ml.v12i2.2659>

³ Fadli, M. R. (2021). Memahami desain metode penelitian kualitatif, 21(1), 33-54. <https://doi.org/10.21831/hum.v21i1.38075>

government. The Dutch controlled most of the archipelago, which they called the Dutch East Indies. Likewise, the British had controlled the Malay Islamic kingdoms in the Malay Peninsula. European colonial rule was established after facing resistance from indigenous Muslim rulers and their people. But the political and military power of the Europeans was superior and succeeded in subduing and ending the political power of the indigenous Islamic kingdoms. The same thing happened in most Muslim countries in Asia-Africa.

Colonial rule did not erase the existence of Islam in the archipelago. In fact, the power of Muslims driven by religious fervor has rebelled a lot in order to break away from colonial rule. The colonial government's policies on Islam were made in order to maintain power over Muslims, whether related to worship, civil law, or politics. As can be seen in Snouck Hurgronje's advice to the Dutch East Indies colonial government to differentiate policies towards Islam of worship and political Islam.

European political rule in the archipelago was finally ended by the Japanese Army at the outbreak of World War II. The Japanese military government also made policies on Islam in order to maintain power over Muslims who constituted the majority of the population.

3.2 Islamic Sharia and Muslim Sultanates in the Archipelago in the Pre-Colonial Period Europeans

Efforts to establish an Islamic state and formalize Islamic sharia in state law have been carried out by Muslims in the Archipelago long before the colonialism of European nations. At that time, Muslims had played a dominant role in politics in the Islamic kingdoms of the archipelago. History has recorded the emergence of Islamic states such as Samudera Pasai, Aceh, Demak, Islamic Mataram, Tallo, Gowa, Ternate, Tidore, and others. At that time, Islamic law could be freely implemented with the support of Muslim rulers. Islamic Sharia or Islamic law is a law that stands alone and has a strong position, both at the community level and in state legislation. With the establishment of these Islamic kingdoms, the authority to administer Islamic law was handed over to the state courts.⁴

The royal system of government at that time certainly placed sovereignty in the hands of the king for generations. Thus, the government at that time was certainly not a democracy that requires the participation of the people as those who are considered powerful. Power was in the hands of the royal family. They were the ones who determined whether the lives of the people were prosperous or not. They were also the ones who determined what kind of rules were applied in their country. It just so happens that in general, Islamic sharia is applied by Muslim rulers as a consequence of the religious-state form. *Surambi*. This institution was not directly under the king, but was led by ulama. It was called the *Surambi Court* because it was held in the portico of the Great Mosque. The head of the court, although at the policy level it was still in the hands of the sultan, but in practice it was in the hands of the *penghulu* who was accompanied by several ulama from the pesantren environment as members of the assembly. The decision of the *Surambi Court* served as advice for the sultan in making decisions. In reality, the sultan never made a

⁴ Alaidin Koto et al., (2012), *Sejarah Peradilan Islam*, 2nd cet, Jakarta: RajaGrafindo Persada, p. 197-198.

policy that contradicted the decision of the Surambi *Court*. The ⁶⁴term penghulu was also known in the Sultanate of Palembang Darussalam.⁵

The sultanate adhered to three judicial systems. *First*, the Religious Court led by Prince Penghulu Nato Agamo.⁶ *Second*, the General Court led by Tumenggung Karto Negaro. *Third*, the Customary Court (Rapat Besak- Rapat Kecil) led by Pangeran Adipati or Depati.⁷

Banten was the Islamic kingdom that most strictly implemented Islamic law and was no longer influenced by customary laws, Buddhism,⁸ or Hinduism. By the time Sultan Ageng Tirtayasa came to power (1651-1680), Islamic law was in full effect. The law of cutting off hands for thieves by cutting off the right hand, left foot, and so on was already applied for theft with a value of one gram of gold. Banten's history states that the highest *shaikh* was titled *Kyai Ali* or *Ki Ali* and was later known as *qadi*. The position of *qadi* was initially held by a cleric from Makkah, but from 1650 and early 1651, *qadis* began to be held by Bantenese nobles.

3.3 Islamic Sharia during Colonialism Netherlands

The 19th and 20th centuries were two centuries of peak European imperialism. Power-hungry Western imperialist nations such as Britain, France and others rampaged everywhere, especially in Asia and Africa. Their imperialism and colonialism threatened sovereign states to become part of their territories.⁷⁶ Since the 16th century, the Dutch have set their imperial foot in the Archipelago. When they first arrived, the Dutch encountered the fact that most of the archipelago's population was Muslim. The Islamic social system was already in place. Islamic institutions such as religious courts and Islamic law were *well established*.⁷

The strengthening of Golkar was done in various ways. (1) At first, the Army leadership placed its people in the leadership of the Joint Secretariat of Golkar. (2) Minister of Home Affairs Regulation No. 12 of 1969 and Government Regulation No. 6 of 1970 were issued to prohibit civil servants from becoming members of political parties. (3) monoloyalty was demanded by only giving support to Golkar in the elections. (4) *underbouw* organizations were built through corporatist networks to mobilize the masses, such as Korpri for civil servants, AMPI in youth organizations, and GUPPI for ulama.

The "grooming" was also carried out against political parties that considered to hinder Golkar's victory in the elections. Soekarno-supporting elements within PNI were removed and replaced with those loyal to the New Order. Within NU, those sympathetic to the Jakarta Charter were reduced in role, while KH Idham Chalid, who was accommodating, was retained. The government banned the re-establishment of Masyumi and only allowed the establishment of a new modernist

⁵ Gadjahnata, (1986), *Masuk dan Berkembangnya Islam di Sumatera Selatan*, Jakarta: UI Press, p. 211.

⁶ Cik Hasan Bisri, (1997), *Peradilan Islam dalam Tatanan Masyarakat Indonesia* (Bandung: Rosda works, p. 36.

⁷ Musyrifah Sunanto, (2004), *Sejarah Islam Klasik; Perkembangan Ilmu Pengetahuan Islam*, 4th cet. Jakarta: Kencana, p. 133-142.

⁸ *Ibid.*

⁹ *Ibid.*

party, Parmusi.

In summary, during the New Order era, the relationship between Islam and the state underwent a metamorphosis. At first, their relationship was antagonistic (1966-1981), then it turned into reciprocal-critical (1982-1985). Since 1985, their relationship has taken an accommodative pattern. After the New Order government consolidated its power, it immediately exercised stronger control over Islamic political forces, especially radical groups that it feared could challenge the government's power. Concerns about rising Islamic militancy were high on the agenda of the New Order political elite. The trauma of the past, the "defiance" of Islamic figures, and the issue of an Islamic state haunted the minds of decision-makers. Their concerns included several things: the emergence of Islamic radicalism that struggles to form an Islamic state, the reappearance of Islamic political parties in the national political arena, concerns about the spread of primordialism issues, including problems.

In this political context, Muslim leaders who wanted to re-establish the banner of Islamic politics on the national political stage in the early days of the New Order came to a dead end. Islamic politics was not only restricted, but also placed in a position parallel to communism by naming the extreme right for Islamic politics and the extreme left for communism. Extreme right is a socio-political stigma thrown by the state to political Islam that seeks the establishment of an Islamic state. Political Islam is considered to have the potential to create national chaos because of its denial of Indonesia's fundamental political identity, namely multiculturalism and national unity.

Initially, many Islamic political leaders and activists had high hopes for the New Order government. This hope was especially evident among former Masyumi leaders and their followers who had felt completely marginalized during the Guided Democracy period. They had expected the return of Islam to the stage of national political discourse. They hoped that the rehabilitation of Masyumi would not be long in coming. For this, a committee called the Muslim Charity Coordinating Board was established to realize this hope.

The Muslim community's disenchantment with the state was reinforced by a number of government policies that were considered contrary to religious teachings. At the beginning of the New Order, they took offense to Ali Sadikin, the Governor of DKI, who allowed gambling. Their anger was again provoked by the government's proposed marriage law in 1973, which was seen as contrary to Islamic teachings. In 1978, they again objected to the government's attempt, in a session of the MPR, to raise the status of *aliran kepercayaan* to the same position as religion. Another attack on their religious beliefs took place in 1983. The government was compelled to implement the Pancasila policy as the "single principle" for all existing political organizations (Golkar, PPP, and PDI). The PPP and PDI were finally forced to accept Pancasila as the principle of their ideology.

The next period was the period of reciprocal-critical relations (1982-1985). The relationship between Islam and the state was characterized by a process of learning and understanding each other's positions. This period was initiated by a *political test* by the government by offering the concept of a single principle for political organizations and subsequently for all mass organizations in Indonesia.

In the commemoration of the Maulud of the Prophet Muhammad (December 1983), President Soeharto reiterated the need for a single principle for political parties and the Golongan Karya, as well as for all mass organizations in Indonesia. The President emphasized that the use of Pancasila as the principle of social organizations is in no way intended to reduce the meaning and role of religion in the life of the nation and state, but it is a necessity to bind various forms of joint activities as the basis for the same direction to build a socialist-religious Pancasila society. The President considers it necessary to further strengthen Pancasila as the political and social principle of the nation.⁹

In this context, it can be understood that the New Order government defended Pancasila and the 1945 Constitution, and formulated a new party system and community organizations as an effort to reduce ideological conflicts so as not to damage the main joints of national unity. The government sought to integrate all national potentials to be directed towards maintaining unity and integrity.¹⁰

In general, the reaction among Muslims can be divided into three types: (1) accepting without *reserve*, (2) accepting with compulsion while waiting for the release of the Keormasan Law, and (3) rejecting it altogether. The *first* group included the PPP, NU, Perti, and the Indonesian Council of Mosques. The *second* group includes Muhammadiyah and HMI. While the *third* group is the Indonesian Islamic Students (PII), as well as figures such as Deliar Noer, Syafruddin Prawiranegara, Yusuf Abdullah Puar, and preachers who openly expressed their disagreement with the single principle. The climax was marked by the Tanjung Priok incident.¹¹

4. CONCLUSION

The process of formalizing Islamic law and institutionalization of Islamic sharia in Indonesia has fluctuated depending on the model of the relationship between state and religion adopted by the various regimes that have ruled. Under the rule of Islamic kingdoms that operated as faith-based states, the implementation of Islamic sharia was carried out unhindered. The *maqhashid shari'ah* perspective The institutionalization of Islamic shari'ah as part of state law is more influenced by the dynamics of the relationship between Islam and the ruler. In the context of the struggle of Islamic elements, if the orientation of Islam is formal and driven by Islamic political groups, then formalization efforts become complicated. This is because the adoption of Islamic sharia in the form of institutions is considered a step towards the formation of an Islamic-based state, which has the potential to oppose the basic principles of Indonesian diversity and unity. An Islamic-based state is seen as risking the exclusion of the rights of non-Muslim citizens. In contrast, when Islam is cultural, which prioritizes the essence over the format of the state, and thus is willing to accept Pancasila and the principle of diversity, the process of formalizing Islamic law runs more smoothly and more widely, especially towards the end of the New Order era and

⁹ Sahid, H. M, (2016), *Legislasi Hukum Islam di Indonesia: Studi Formalisasi Syariat Islam*, Surabaya: Pustaka Idea, p. 78-79.

¹⁰ *State Speech of the President of the Republic of Indonesia Soeharto in Front of the House of Representatives August 16, 1982*, Jakarta: Ministry of Information of the Republic of Indonesia, 1982, p. 18.

¹¹ *Tempo*, February 4, 1983 in Abdul Aziz Thaba, *Islam ..., op. cit.* p. 263-264.

during the Reformation era. This is because cultural Islam is not considered a threat to the ideology of Pancasila, which guarantees the equality of all citizens.

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