



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

"Legal Development in Various Countries"



IMAM AS SYAFEI BUILDING
 Faculty of Law, Sultan Agung Islamic University
 Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

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"LEGAL DEVELOPMENT IN VARIOUS COUNTRIES"

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

SPEAKERS :

1. Prof. Shimada Yuzuru
Nagoya University, Japan
2. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
3. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
Sebelas Maret University, Indonesia
4. Assoc Prof. Dr. Ahmad Zaharuddin S.
Universitas Utara Malaysia, Malaysia
5. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultan Agung Islamic University, Indonesia

Indonesia, September 05th 2017

WORLD ISLAMIC UNIVERSITY
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International Conference

5
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Faculty of Law, Sorbonne University
3. Prof. Dr. Ruzian Markom
Universitas Kebangsaan Malaysia, Malaysia
4. Prof. Dr. I Gusti Ayu Rachmi, S.H., M.M
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Universitas Utara Malaysia, Malaysia
6. Dr. Anis Mashdurohatus, S.H., M.Hum
Sultan Agung Islamic University, Indonesia

Organized by : Faculty of Law UNISSULA Semarang-Indonesia

IMAM AS SYAFEI BUILDING, Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

FACULTY OF LAW
Sultan Agung Islamic University

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from SebelasMaret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.


Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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THE DEVELOPMENT OF ISLAMIC LAW IN THE LEGAL SYSTEM IN INDONESIA

Sumarwoto

sumarwotoumar@yahoo.co.id

The Student of Law Doctoral Programme UNISSULA

Abstract :

As a sovereign state of law, an absolute necessity is to reform the field of law, and to ensure that a legal system is established. System is a unity consisting of elements that interact with each other and work together to achieve the goal of unity. The unity is applied to the complex juridical elements such as rule of law, legal principles, and legal understanding. The established national legal system must be nationalized and applicable to all citizens regardless of a particular religion. Islamic law is a law that comes from the Islamic religion based on Al-Quran and Hadits. Islamic law must have a position in the national legal system, because it is a law that has been recognized even before the people of Indonesia independence. The existence of Islamic Law in Indonesia has experienced a dynamic and sustainable development, both through the channels of political infrastructure and superstructure in line with the reality, demands and support, and the will for the transformation of Islamic law into the national legal system. The national legal system rests on Pancasila and the 1945 Constitution namely the principle of "Belief in the One Supreme God"; Implying that there is an obligation of the people of Indonesia to carry out the command of God who according in Islam to doing the Islamic Shari'a. This means that Islamic law has an important role in the development of national law.

I. Introduction

Indonesia is a State of law, intending to establish a new law in accordance with Indonesian nationality, it can be found in the opening of the 1945 Constitutions;

"... then the nationalist independence of Indonesia was formulated in an Indonesian State Constitution, which was formed in a composition of the Republic of Indonesia ..."

Attempts to realize the new national law remain, though obstacles continue to confront, not only by recepty theory,¹ Which is still widely entrenched in the midst of society, especially those from among the colleges of positive law who do not want the dominance of Islamic law² in national law, but also by Islamic scholars themselves who still understand Islamic law in a piece and cut into The narrow skeletalism of the schools of thought, so that it becomes more and more preoccupied with various disputes amongst others by forgetting the increase of consciousness to implement the Islamic law in the reality of the life of the Ummah.

Islamic law has a position in the national legal system because the law is a law that has been recognized by Indonesian society since long. So that in the development and fostering of national law should be paying attention to the laws of religion (Islam) as has been

¹ Sucipto, 1993, Critical Review of Indonesian Law Development, in Analysis (SIS, No. I, January-February,) page: 64

² Juhana S. Praja, 1994, Islamic Law in Indonesia: Thought and Practice (Bandung: Teens Rosdakarya), page: 85

recognized by the community. The development or renewal of Islamic law is essentially based on something that already exists, then experienced a qualitative change as a product of interaction in people's lives.

It can be said that the process of reforming Islamic law is seen as something autonomous, but it also interacts with other elements in society so that happens interdependent. When Islamic law interacts with the social life of society always faced with problems, both internal and external. Therefore, the concept of reform of Islamic law requires an adaptative attitude to the social conditions of society in which it interacts. Thus, the reform of Islamic law must be made to respond to the demands of change that occur in the midst of society.

Upon exposure to the above that became the problem identification in this paper is :

1. What is the existence and role of Islamic law in the development of national law?
2. What is the legislation strategy of Islamic law in the development of law in Indonesia?

II. DISCUSSION

A. THE EXISTENCE OF ISLAMIC LAW

Sociologically, the law is a reflection of values that are believed by society as an institution in the life of society, nation and state, meaning that the legal content should be able to capture the aspirations of a growing and developing society, not only contemporary, but also a reference in anticipating social development , economics and politics in the future³. Thus, the law is not only a static norm which only prioritizes certainty and order, but is also capable of dynamizing thinking and manipulating people's behavior in reaching ideals.

In the Islamic perspective, the law will always be able to underlie and direct the various social changes of society. It is recalled that Islamic law⁴ contains two dimensions,:

- a) Islamic law in relation to the Shari'ah⁵ rooted in the nash qath'i applies universally and becomes the unifying principle as well as reflects the mainstream of the activities of Muslims worldwide.
- b) Islamic law rooted in nas zhanni which is the territory of ijtihadi whose products are then called fiqh.⁶

It is in this second sense, which then gives the epistemological probability of law, that every region inhabited by Muslims can apply Islamic law differently, in accordance with the context of the problems encountered.⁷ After the arrival of the colonizing nation which then managed to take over all the power of the Islamic empire, then little by little Islamic law began to be trimmed, until finally left-in addition to worship-only a part of family law (marriage, divorce, reconciliation, inheritance) with the Religious Courts as its executor.⁸

³ Ahmad Rafiq, 1995, *Islamic Law in Indonesia*,: 12: Rahmat Djatmika, 1991, *Socialization of Islamic Law in Indonesia*, in Abdurrahman Wahid, et al, *The Controversy of Islamic Thought in Indonesia*, Bandung, Youth Rosdakarya, Cet. I, page: 230

⁴ Ibid. p: xi-xii

⁵ Amrullah Ahmad, cs, 1966., *The Dimension of Islamic Law in National Legal System* (Jakarta: Gema Insani Press,) p: ix

⁶ Hasbi Ash-Shiddieqy, 1988, *Philosophy of Islamic Law*, (Jakarta: Crescent Star., cet III), page: 44

⁷ The Shari'a has two meanings: general and special. In general, it covers the whole of life and Islam including the knowledge of the divine. In a special sense, the provision resulting from the understanding of a Muslim who qualifies certain Qur'an and sunnah using a particular method (Ushul Fiqhi), See: Juhana S. Praja .opage:cit ..., page: vii

⁸ Abdul Wahhab Khallaf, 1978, *Ushul Fiqh Science*, (Kuwait: Dar al-Qalam.), page:11

Nevertheless, Islamic law still exists, even if it is not complete. Sociologically and culturally, Islamic law never dies and is even always present in the life of Muslims in any political system, both colonialism and independence and up to the present. In further development, Islamic law in Indonesia is then divided into two :

1. Islamic law that is normative, that is related to aspects of pure worship, whose implementation is highly dependent on the faith and compliance of Indonesian Muslims to their religion.
2. Islamic law that is of a formal juridical nature, which is related to the aspect of Muamalat (especially the civil sector and is also celebrated in the criminal sector⁹ even though it is still in the struggle stage), which has become part of the positive law in Indonesia.

Although both (normative and juridical law) still have differences in their enactment, they can actually be executed simultaneously in Indonesia in accordance with the 1945 constitutions chapters of article 29 verse 2. Then it can be interpreted that the essence of Indonesian Islamic law is Islamic law who live in Indonesian society, both normative and formal juridical¹⁰, concrete can be in the form of Laws, fatwa ulama and jurisprudence.

B. THE ROLE OF ISLAMIC LAW IN THE NATIONAL LEGAL DEVELOPMENT

Satjipto Raharjo states ¹¹:

"Legal coaching includes service providers and law enforcement, administrative coaching or management of establishment, service, and law enforcement, including those necessary for a comprehensive planning of national development or development. Only then will the law affect the social order to new and modern Indonesian society".

According to him; related to the development of national law, at least Islamic law can contribute in the development of national law of several things, namely :

- a). Filling a legal void that has no rules in the rules or regulations in Indonesia;
- b). Provide moral education to law enforcement and community.

Furthermore, the role of Islamic law in the development of national law must be pursued through a process of legislation from law enforcement. The provisions of Islamic law that need to be legislated is the provision of law that has a category :

- a) Its enforcement requires the help of state power.
- b) Correlates to public order.¹²

If efforts to develop and develop Islamic law in Indonesia through the legislation path have constraints, then the alternative can be taken through non-legislation. For Indonesian conditions, non-legislative alternatives are more likely for several reasons¹³:

- 1) First, it does not impress "majority dominance," because its form does not place Islamic labels, simply incorporates values that are considered principles.

⁹ Ahmad Rafiq, Op.cit

¹⁰ Ali Shafii, The Function of Islamic Law in the Life of the People, in Amrullah Ahmad, Op:cit

¹¹ Satjipto Rahardjo, 2010, Sociology of Law, Cet. I ,Yogyakarta: Genta Publishing,, page: 117-119.

¹² Jazuni, 2005, Legislation of Islamic Law in Indonesia, Cet. I ,Bandung: Citra Aditya Bakti, page: 353

¹³ Warkum Sumitro, 2005, Development of Islamic Law Amidst Social life Politics in Indonesia, Cet. I ,Malang: Bayumedia,page: 214-215

- 2) Second, the support of the political structure need not be done blatantly so that the role is the voice of conscience. That is, the commitment of Islamic leaders in the structure of the struggle of Islamic values (Islamic law) is very important.
- 3) Third, the problem of form and process is not important. The important issue of substance.
- 4) Fourth, because the forms and processes are not so important, it can be done to the field of law around the public and in this case more strategic.

Peace, happiness of life, legal protection, legal guarantees and legal certainty in the order of private life and society, nation and state, world peace is the purpose and function of law in the national legal system that philosophizes Pancasila.¹⁴ According to Masykuri Abdillah, in terms of orientation the application of Islamic law can be classified into three groups, namely: First, is the orientation that seeks to fight for the implementation of a comprehensive teaching (kaffah), the field of aqidah, syari'ah, and ethics-moral. Secondly, it is the orientation that seeks only to advocate for the implementation of Islamic faith and ethics. Third, it is the orientation that seeks only to strive for as far as possible the implementation of shari'ah-in addition to aqidah and ethics-moral-or at least its principles, integrated into the national system. The first incarnation made Islam as ideological, the second made Islam a source of ethics, and the third made Islam a sub-ideology.¹⁵

The first incarnation is indeed idealistic in the Islamic context, but less realistic in the context of a very pluralistic Indonesian society and nation. While the second orationation is idealistic in the context of Indonesianism but less realistic in the context of Islam, whose teachings do not separate religion from the state. A strong pull on one of the orientations will lead to a stronger pull toward the opposite orientation, and will even lead to greater internal conflict. Therefore, a middle path is needed between the two, which is to make Islam a sub-ideology for Pancasila.¹⁶

C. ISLAMIC LEGISLATION STRATEGY IN LEGAL DEVELOPMENT

The legislation strategy of Islamic law in the development of law in Indonesia can be done through three sectors (citing Weiner Friedman's theory), among others:

1. Substance law

Article 5 of Law Number 10 Year 2004 concerning the Establishment of Regulation of the Laws states that in establishing legislation the legislation should be based on the principle which includes: 1) Clarity of purpose; 2) The appropriate institutional or organizers; 3) Conformity between the type and content material; 4) Can be implemented; 5) Utility and usefulness; 6) Clarity of formulation; and 7) Openness.

The content of regulatory matters as regulated in Article 6 of Law Number 10 Year 2004 contains principles which include: 1) Pengayoman; 2) Humanity; 3) Nationality; 4) Kinship; 5) Merchandise; 6) Bhinneka tunggal ika; 7) Justice; 8) Equality of position in law and government; 9) Order and legal certainty; and / or. 10) Balance, and harmony.

¹⁴ Ichtijanto, 1991, Pancasila Legal System, Bandung: Rosdakarya, page: 155 -156

¹⁵ Masykuri Abdillah, 2005, at. al., Formalization of Islamic Shari'ah in Indonesia; An Uncompleted Struggle Cet. I ,Jakarta: Renaisan., page: 319

¹⁶ Ibid., page: 322 -323.

2. The legal structure

Structures according to this theory include institutions or institutions forming and law enforcement. Islamic law can contribute in moral / moral teaching to the authorities in forming and enforcing the law. Moral teachings of Islamic law are felt important in improving mental law enforcement. If the moral of law enforcement is good, then the implications of law enforcement will be authoritative in society. This is in accordance with the second point of Pancasila sila, "Just and civilized humanity".

3. Culture / legal culture

A brief history of the journey of Islamic law in Indonesia is a law that lives in society and becomes an integral part of the legal consciousness of Indonesian society. Although in fact not all aspects of Islamic law apply as positive law in Indonesia.

The enforcement of Islamic law in the national law scene is also determined by the extent to which the supporters of Islamic law have the awareness to accept and implement it. The provisional fact shows that Muslims as supporters of the new Islamic law are potential, not yet an effective social base. Attitudes of Muslims who do not support for the implementation of Islamic law in the development of national law needs to be addressed more intensively. There is still a need to nationalize Islamic law among the followers of Islam as the majority population so that they really have a high awareness of Islamic law which is ultimately expected to obey.

D. DEVELOPMENT AND DEVELOPMENT OF ISLAMIC LAW

Among the forms of Islamic law contribution, at least in the aspect of Islamic inspiration and values (especially the civil sector because the criminal field is currently not possible) against national law is¹⁷. Law Number. 14 of 1970 on the principal powers of the judicial authorities in article 10 paragraph (1) is enacted; "Judicial power is exercised by the judiciary in the ward: 1) General Court, 2) Religious Courts, 3) Military Courts, 4) State Administrative Courts.

From the institutional point of view, this LAW has been codified and uniquely specified in UNDANG-UNDANG Number 1 year 1974 on Marriage. So it becomes a written law and applies to all Indonesian people without exception. However, substantially there are certain parts that apply only to Islamic societies only. UNDANG-UNDANG Number. 7 year 1989 on Religious Courts. This law was born after a long and difficult struggle in three ages: the Dutch colonial era, the period of Japanese occupation and post-independence.¹⁸

In 1946, the Government of the Republic of Indonesia began to hand over Religious and Ministry of Justice guidance to the Ministry of Religious Affairs through Government Regulation Number 5 / SD / 1946, then after the recognition of sovereignty, December 27, 1949 Government of the Republic of Indonesia through Emergency Law No. 1 of 1951, again to establish a Religious Judiciary. As a follow-up to the affirmation, at least three laws have been issued that govern the Religious Courts in Indonesia, namely: Stbl 1882 No. 152 jo Stbl 1937 No. 116 on Religious Courts in Java and Madura. Stbl 1937 No. 638 and 639 on Religious Courts in South Kalimantan.

¹⁷ Andi Rosdianah, 1996; Problems and Constraints Faced by Islamic Law in Transformation Efforts into National Law, Paper presented at National Seminar on Islamic Law Contribution in National Law Development After 50 years of Free Indonesia, in Ujung Pandang on 1-2 March 1996, -10; Umar Shihab, Institutional Aspects of Law and Legislation, Paper Presented in the same seminar, page: 13-14

¹⁸ Syadzali Musthofa, 1990; Introduction and Principles of Islamic Law in Indonesia, Cet II, Solo: CV Ramadani, page: 59

Furthermore, with the enactment UNDANG-UNDANG Number 7 of year 1989, in addition to further reinforcing the existence of Religious Courts in the national court system, has also canceled all the rules about the Religious Courts that have been there before.

E. REVOCATION OF ISLAMIC LAW IN INDONESIA

The term renewal is a translation of the Arabic, *Tajdid* which in Indonesian terms is known as modern, modernization and modernism. In Western society, modernism means thought, flow, movement and effort to change ideals, customs, old institutions, and so to adapt to the new atmosphere brought about by the advancement of modern science and technology.¹⁹

In the field of Islamic law (specially in Indonesia), the *tajdid* in question may take the form of a thought or movement (in the field of Islamic law) which wishes to change the old ideology or mind derived from *zanni* (*muamalat*) non-*qath'i* to be adapted to the demands of a new atmosphere arising from the advancement of local times and cultures in Indonesia, in the framework of development, fostering and establishment of national law.

Compilation of Islamic Law (KHI) which was born based on Inpres no. 1 of year 1991²⁰, which contains a summary of the various legal opinions of the *fiqh* books to be taken into consideration for judges of religion in making decisions,²¹ and then structured systematically resembling the book of laws, consisting of chapters and chapters, is one of the contributing reforms of Islamic law in Indonesia.

Referred to as renewal, since on the one hand the idea of the existence of the KHI has never been formally exposed (although the material of the *madhhab* comparisons has long been known), as well as some of its contents material is new, especially for Indonesian Muslim society, such as successor heirs, banning different marriages religion; Other products still included in this section are, for example, UNDANG-UNDANG Number 7 of year 1989 on Religious Courts, and Government Regulation Number. 28 on Land Ownership Land.

With the existence of various reforms, it is possible Islamic law in Indonesia then developed in accordance and along with social change, especially in the current era of globalization. Where the progress of information technology can often lead to shifts in values that were originally considered to be very well established. If Muslims do not quickly anticipate such social change and at the same time find the right solutions and solutions, it is not impossible that Islam will be hit by crisis of relevance²² and akhirnya marginalized and abandoned people²³.

Noel J. Coulson, as quoted by Amir Mu'alim and YUSDANI in the book *Configuring Islamic Law Thought*, states that the reform of Islamic law manifests itself in four forms:

- 1) Codification (ie grouping similar laws into the Book of the Law) Islamic law becomes the law of state legislation, referred to as the *siyasah* doctrine;

¹⁹ Harun Nasution, 1975; *Renewal in Islam. History of Thought and Its Movement*, Jakarta: Moon Month, page:11

²⁰ A. Hamid S. Atamimi, 2005; *The Position of Islamic Law Compilation in the National Legal System, A Surge from the Corner of Indonesian Laws*, in Amrullah Ahmad et al, (ed), *The Dimension of Islamic Law in the National Law System*, page: 152

²¹ Abdurrahman, 1995: *Compilation of Islamic Law in Indonesia*, Jakarta: Akad: Mika Pressindo, page: 15-20.

²² See: Introduction to Amin Rais in Fathurrahman Djamil, 1995; *Method Ijtihad Majlis Tarjih Muhammad*. Jakarta: Logo Publishing House, page: X

²³ John Obert Voll in Ajat Sudrajat, 1977; *Islamic Politics: Survival and Change in the Islamic World*, Yogyakarta: Titian Ilahi Press, page: 444

- 2) Unbounded Muslims in only one particular legal school, called the doctrine of *takhayyur* (selection) that gets the most dominant name in society;
- 3) Legal developments in anticipation of the development of newly arising legal events, referred to as *tatbiq* doctrines (application of law against new events);
- 4) The change of law from the old to the new is called the doctrine *tajdid* (reinterpretation).²⁴

Nevertheless, history often presents quite sad facts about the fate of the initiators of reform, both in Indonesia and elsewhere.²⁵ The causes are quite varied, among them the interpretation of the renewal in provocative terms, which with certain connotations can lead to suspicion and misunderstanding.

Renewal is then considered by some as an attempt to sue the validity of the source of Islamic teachings that have been believed to have been very true and established. The fact shows that there are still some Muslims, even intellectuals who still maintain the interpretation of the old teachings and are not open to new ideas; a concrete example, especially in the field of Islamic law is the determination of the idea of jurisprudence of Indonesian-ness by Hazairin with the National School²⁶ and Hasbi Ash-Shiddieqy with *Fiqih Indonesia*²⁷.

The opposition is not only from the laity, but the very hard one is precisely from the intellectuals, such as Ali Yafi²⁸ although later it seems to be a tendency to support it.²⁹ Furthermore related to the prospect of Islamic law in Indonesia, there are at least two aspects that need to be put forward :

1. Aspects of strength and opportunity. Both are related to Islamic law and Muslims who act as supporting the prospects of Islamic law in Indonesia.
2. Aspects of weakness and obstacles. This aspect relates to legal life in Indonesia which becomes an obstacle to the prospect of applying Islamic law as a positive law in Indonesia.

The aspect of the power of Islamic law in the development of the national legal system in Indonesia is³⁰:

- a. Al-Qur'an and hadith, which besides containing the teachings of *aqidah* and *akhlaq*, also contains a rule of social law, both civil and criminal sectors of mutual support from which then born the principles of law in Islam, principles and objectives -the goal.³¹
- b. Islamic Shari'a comes for the benefit of mere mortals, in accordance with nature and nature which advocates good deeds, and prohibits destructive acts.³²

²⁴ Amir Mu'alim and YUSDANI, 2001; Configuration of Islamic Law Thought, Yogyakarta: UII Press, page: 15

²⁵ see: Munawir Sjadzali, 1991; Islam and the State: Doctrine, History and Thought (Jakarta: UI Press), page: 21; Taufik Adnan Amal, 1994 ;, Islam and Challenges of Modernization: Studies on Legal Thoughts Fazlur Rahman (Cet. V: Bandung: Mizan,), pp: 104-105; Muhammad Kamal Hasan, 1987; Muslim Intellectual Response to New Modernization (terj) by Ahmadie Thaha (Jakarta: Indonesian Study Circle,page: 150-151

²⁶ Hazairin, 1971: Where to Go to Islamic Law, The Purpose of the Law, Jakarta: Tinta Mas, page: 115

²⁷ Nouruzzaman Shiddieqy, 1996; Jeram-Jeram Muslim Civilization ,Cet. I: Yogyakarta: Student Literature, page: 236.

²⁸ Ali Yafie, 1985 ;, Missing Link, In Pesantren no. 2, Vol. II, page: 45-46

²⁹ -----, 1994, Initiated Fiqhi Indonesia, Cet 1: Bandung Mizan, p: 107-122

³⁰ Muin Salim, Constitutionalization of Islamic Law in Indonesia (papers), page: 3-5

³¹ Abu Ishaq al-Syatibi, Al-Muwafaqat fi Usul al-Syare'ah, Volume II ,Beirut: Dar al-Kutub al-Ilmiyah, tt), page: 3-4; Rahmat Djarmika, 1994; Paths Seeking Islamic Law Efforts to Understand Ijtihad Methodology, in the Aspects of Islamic Law in the Framework of Development of National Law in Indonesia, Jakarta: FP-IKAHA, page: 146-157

³² Ahmad bin Hanbal, 1987; Musnad Ahmad bin Hanbal, Volume I (Cet II: Beirut: Maktabah al-Imam,), page: 266; QS. 2: 195

- c. In the history of the journey of law in Indonesia, the existence of Islamic law in national law is a struggle for existence, which formulates the state of Indonesian national law in the past, present and future, that Islamic law is in national law, both written and not written, in various fields of legal life and legal practice.³³
- d. The realization of the contribution of Islamic law in national law is a clear proof of the strength and ability of Islamic law in integrating with national law.
- e. The effort to re-actualize Islamic teachings in the law as mentioned above is also part of efforts to reform Islamic law, especially in the context of modern-day adults, in the hope of realizing a legal solution that can protect the society. so that what they apply in everyday life will always run on a flexible and fair legal basis.³⁴

III. CONCLUSIONS

From the above description can be concluded that the role of Islamic law in the development of national law can at least appear in two forms. First, Islamic law comes in the form of a positive law which applies only to Muslims. In this case Islamic law serves to fill the legal void in positive law. Secondly, Islamic law contributes to the drafting of national law as a source of value. In this context the noble values embodied in Islamic law will become broader in its role to realize the benefit of the nation and state without distinction of religion.

Therefore, Islamic law will be achieved as *rahmahtan li al-'alamin*. In addition to being a value supplier, he can also guide existing legislation in order for the implementation of Islamic law to be granted legal guarantees in it. The struggle for the validity of Islamic law in Indonesia should continue through both forms above or with other possible forms.

Historical facts have proven that the product of Islamic law since the colonial period until the independence period and the period of reform is a fact that can never be challenged. It has been rooted among the muslim community of Indonesia.

³³ Andi Rasdiyana, *Op.cit*, page: 5-6

³⁴ Nasrul Rusli, 1999: *The concept of Ijtihad al-Syaukani* (Cet I. Jakarta: PT Logos Wacana Ilmu), page: 173

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