

ISLAMIC LAW, POLITICS AND LEGISLATION: DEVELOPMENT OF ISLAMIC LAW REFORM IN POLITICAL LEGISLATION OF INDONESIA

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Abstract

The development of Islamic law in Indonesia cannot be separated from the political configuration that occurred in the Transition Era, the Old Order, the New Order and the Reformation Era. Every political era certainly provides value and color to the product of Islamic legal legislation produced. Legislation on Islamic law is always carried out gradually considering the development of the Indonesian political system also continues to develop. Since Law No. 1 of 1974 concerning Marriage to Law No. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, efforts to reform Islamic law nationally are a necessary thing to do in line with social change and the legal values in the middle of Indonesian society. Eclectically, the characteristics of adaptive and dynamic Islamic law have great potential in the development of national law amid the pluralism of the Indonesian legal system, both in substance and in the essence of law.

Keywords: Development, Islamic law, political, legislation

Abstrak

Perkembangan hukum Islam di Indonesia tidak dapat dipisahkan dari konfigurasi politik yang terjadi di Era Transisi, Orde Lama, Orde Baru, dan Era Reformasi. Setiap era politik tentunya memberikan nilai dan warna pada produk legislasi hukum Islam yang dihasilkan. Legislasi tentang hukum Islam selalu dilakukan secara bertahap mengingat perkembangan sistem politik Indonesia juga terus berkembang. Sejak Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan hingga Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, upaya untuk mereformasi hukum Islam secara nasional adalah hal yang perlu dilakukan sejalan dengan perubahan sosial dan nilai-nilai hukum di tengah masyarakat Indonesia. Secara eklektik, karakteristik hukum Islam yang adaptif dan dinamis memiliki peluang dan potensi besar dalam pengembangan hukum nasional di tengah pluralisme sistem hukum Indonesia, baik secara substansi maupun dalam esensi hukum.

Kata Kunci: Perkembangan, hukum Islam, politik, undang-undang

Introduction

as a country with a Muslim majority population, does not necessarily make Indonesia an Islamic state.¹ Indonesia with a variety of religions and ethnic groups unites all differences to form a country based on the Almighty God. The implementation of diverse community life arrangements is regulated in a state constitution called the 1945 Constitution. As the basis of the state, the 1945 Constitution provides guarantees and

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¹ According to the Indonesian Central Statistics Board in the 2010 population census report, Indonesia's population of Muslims is 207.2 million or 87.87%. See, Akhsan Naim and Hendry Syahputra, *Kewarganegaraan, Suku Bangsa, Agama, Dan Bahasa Sehari-Hari Penduduk Indonesia: Hasil Sensus Penduduk 2010, Sensus Penduduk 2010* (Jakarta, 2011).

protections for the rights of life of Indonesian citizens, one of which is a guarantee of legal certainty as mandated by the Constitution in Article 1 paragraph 3 that the State of Indonesia is a State Law.² So, the law and all its aspects have a high value and important essence of the establishment of the Indonesian state.

According to the legal system³, Indonesia adheres to 3 legal systems which are used as material material to create a national legal product. The three systems in question are the Customary legal system, Islamic law and Western law. Indonesia is a Muslim country that adopts legal pluralism, elements of society, constitutional structure and federalism which then forms an Islamic legal structure.⁴

Based on the history of the development of law in Indonesia, the existence of Islamic law in the national legal system is a great struggle. Islamic law was accepted by the Indonesian Muslim community long before the Dutch colonialism, which was alongside customary law which had also existed since the beginning of the existence of people in Indonesia. The existence of Islamic law in Indonesia is simultaneous with the spread of Islam in the archipelago and has become an inseparable part of Islamic teachings. Islamic law and Indonesia are two things that intersect and are mutualism connection. Both of them make positive contributions to the development of Indonesia.

The implementation of Islamic law can run well and regularly, there needs to be integration between Islamic law as part of the national legal development material. According to the Minister of Justice Ismail Saleh, in planning the development of national law, the trinity of national insights must be considered and inseparable from each other, namely nationalist insight, archipelagic insight and single unity. These three insights are needed so that the development of national law can go according to the spirit of the Indonesian people and produce wise policies.⁵

The development of Islamic law in Indonesia as a product of legislation cannot be separated from the political configuration that occurs in Indonesia. The characteristics of Islamic law always adjust so that Islamic law is able to formulate policies in legal legislation so that the resulting legal products are able to provide legal certainty for the community and fill the legal vacuum so that the direction of Islamic law reform from

² Article 1, paragraph (3) *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.

³ Austin describes the legal system as a set of all laws enacted, directly or indirectly, by a single ruler. As for Kelsen replaces the basic norms (of the concept) of Austin sovereignty, and leaves the definition unchanged ie the legal system is a set of all laws determined by the exercise of power given, directly or indirectly, by one basic norm. In his own words: 'All norms whose validity can be traced back to one and the same basic norm form a system of norms, or an order. See, Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System.*, 2nd ed. (United States of America: Oxford University Press, 1980) <<https://doi.org/10.2307/2218669>>.

⁴ In practice, the elements of pluralism, diversity and democracy are proven not only in the modern Muslim world but also in the historical record of the Islamic caliphate. The history of Muslim societies includes various dictatorships and tyrannical states along with several moderate and autonomous countries that exist in various parts of the Muslim world. Several Muslim countries - Turkey, Pakistan, Bangladesh, Malaysia, Indonesia, United Arab Emirates, Jordan and Iran - have adopted certain elements of civil society, diversity, pluralism, federalism and constitutional structures. See, *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)*, ed. by James R. Silkenat, James E. Hickey Jr., and Peter D. Barenboim (New York: Springer, 2014) <<https://doi.org/10.1007/978-3-319-05585-5>>, p. 320.

⁵ Mardani, 'Hukum Islam Dalam Sistem Hukum Nasional', *Jurnal Hukum Dan Pembangunan*, Vol. 38.No. 2 (2008), p. 180.

time to time will continue to make a positive contribution in national law. Therefore, it becomes important for the writer to analyze and further elaborate on the dynamics of the development of Islamic law in Indonesia in the context of politics and legislation.

The purpose of this study is to analyze how the development of Islamic legal reform in the context of political legislation that occurred in Indonesia. The significance of this research is knowledge and insight for readers from various circles, particularly those interested in the study of legislative politics, regarding the history of the development and renewal of Islamic law and opportunities in the development of national law. This research is a type of qualitative research with a historical approach, the legal material used is scientific literature and documents that refer to the research problem. The analysis here uses descriptive analysis of data reduction, data presentation, verification and conclusions. Reduce data by selecting and classifying the types of data that are appropriate and that are not in accordance with the problem. Presentation of data is to provide a group of data that is in accordance with the research problem, then verification will be carried out to stabilize the data that has been appropriate so that research conclusions can be drawn.

Islam and Islamic Law in Indonesia

Historically, Islam and its legal system have existed and developed in Indonesia since the first centuries of Hijriyah along with the 7th century AD.⁶ Long before the formation of the Unitary Republic of Indonesia, Islam and all its legal systems had become part of Indonesian society itself. As in the era of imperial power and the Islamic kingdom, institutions such as the Religious Courts have been formally present such as the Pemulu Court, such as in Java, the Shariah Court in the Islamic Sultanate in Sumatra, the Qadhi Court in the Banjar Sultanate and Pontianak. However, at that time there was no codification of systematic and unificative Islamic law, the law was taken through the study of classical fiqh texts. Interestingly, the Islamic legal system continues to exist in the national legal system, even experiencing positive developments in line with the development of the Indonesian state.⁷ Although, the development of Islamic law at that time was heavily influenced by the politics of colonialism which sought to hamper the pace of the existence of Islamic law as an Indonesian legal system. All forms of policy were formed by the Dutch to castrate the existence of the development of Islamic law.⁸

In 1760 the VOC ordered D.W. Freijer to compile a legal product as a judge's guideline which contains rules on dispute resolution among Islamic societies under VOC rule, the Compendium is known as the Compendium Freijer. After the collapse of the VOC and the withdrawal of the Compendium in 1800, power passed to the hands of the Dutch East Indies. At that time the Dutch figure Van Den Berg introduced the product of thought based on legal facts that occurred in Indonesian society in the form of the Receptie in Complexu theory. This theory can be found Stbl. 1882 No. 152 which contains

⁶ Ahmad Azhar Basyir, 'Hukum Islam Di Indonesia Dari Masa Ke Masa', *UNISIA*, No. 16, 1992, p. 9.

⁷ Muhammad Amin Suma, 'Fenomena Perkembangan Islam Dan Hukum Islam Di Indonesia', *Jurnal Hukum Prioris*, Vol. 2.No. 2 (2009), p. 70-71.

⁸ Hasyim Nawawie, 'Hukum Islam Dalam Perspektif Sosial-Budaya Di Era Reformasi', *Jurnal Episteme*, Vol. 8.No. 1 (2013), p. 2.

provisions for indigenous people or colonies applying religious law in their environment.⁹

Coercive efforts to eliminate the role of Islamic law continue to be intensively carried out, especially when Snouck Hurgronje states that customary law is applied to all Indonesian natives, while Islamic law can only be accepted if it is in accordance with and accepted in accordance with applicable customary norms, known as the Recipe Theory theory and then strengthened and developed by Van Vollenhoven and Ter Haar. In fact, the Dutch East Indies formed a policy stipulated in Staatsblad 1937 Number 116. This rule was the result of the Ter Haar commission's work, which contained recommendations:¹⁰

- a. Islamic inheritance law has not been fully accepted by society;
- b. Revoke the authority of the Religious Court in adjudicating inheritance cases, which are then delegated to the Landraad (General Court);
- c. The Religious Courts are under the supervision of the Landraad;
- d. The decision of the Religious Court judges cannot be carried out without the existence of verklaring executives from the chairman of the Landraad

One effort to recognize Islamic law in Indonesia is when the formation of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI) is fighting for the full re-enforcement of Islamic law without the reception element of customary law. Based on that, the Nine Committee of BPUPKI triggered the Preamble formulation of the Basic Law called the Jakarta Charter on the steps of June 22, 1945. The contents of the Preamble formulation are the basics of state philosophy, one of which is "Belief in the Obligation to Run Islamic Sharia for Adherents -the huger ". This formulation led to pro and municipal opinions until finally in order to avoid a prolonged conflict the formulation was finally changed to "God Almighty" on August 18, 1945 which was the day after the speech of the Proclamation of Indonesian Independence by Sukarno. The formulation was submitted by Moh. Hatta has the same essence as the old formula, only the editorial difference is different.¹¹

After Indonesian independence, all forms of colonialism policy were abolished if they contradicted the spirit of the Pancasila and the 1945 Constitution. The Receptie Exit Theory by Hazairin gave an explanation of the role and position of Islamic law in Indonesia in the national legal system. In addition, continued with the Theory of Receptie a Contrario by Sajuti Thalib who explained that this theory contains a thought that, customary law only applies if it does not conflict with Islamic law. Then came the Theory of Existence by Ichtijanto which further strengthens the role and position of Islamic law in the national legal system reveals the existence of Islamic law as a source of national law, the sound of this theory is as follows:¹²

⁹ Siti Rohmah, 'Rekonstruksi Teoritis Penyerapan Hukum Islam Ke Dalam Hukum Nasional Di Indonesia', tt, p. 7.

¹⁰ Mardani, 'Hukum Islam Dalam Sistem Hukum Nasional', *Jurnal Hukum Dan Pembangunan*, ..., p. 176.

¹¹ Irmawati, 'Irmawati, Teori Belah Bambu Syahrizal Abbas: Antara Teori Reception in Complexu, Teori Receptie Dan Teori Receptio a Contrario', *Petita*, 2.November (2017), 170–86.

¹² Siti Rohmah, 'Rekonstruksi Teoritis Penyerapan Hukum Islam Ke Dalam Hukum Nasional Di Indonesia', tt, p. 11.

- a. Islamic law is an integral part of Indonesian national law;
- b. The existence, independence, strength and authority of Islamic law are recognized by national law and given status as national law;
- c. The norms in Islamic law function as national legal material;
- d. Islamic law is made the main ingredient and the main element in Indonesian national law.

Islamic law as explained above is a legal system that is adhered to by the Muslim community in Indonesia, as a law that lives in the community, and as Islamic teachings and beliefs that exist in the national legal system as well as a consideration for the guidance and development of national law. The relationship between Islamic law and national law is seen through three forms of relationship, namely: a) Islamic law as a law that applies specifically to the Indonesian Muslim community; b) Islamic law is accommodated in general national law for special application; c) Islamic law is accommodated in the law that applies to all Indonesian citizens.¹³

Renewal of Islamic Law in Political Dynamics in Indonesia

After Indonesian independence on August 17, 1945, the Indonesian people began to clean up to overcome various legal and political conflicts that exist. Every outline of the State Policy (GBHN) and state policy is strived to provide guidance and legal development in accordance with the GBHN. The efforts made are not easy, it is necessary to integrate concepts and actions universally and integrally based on the 1945 Constitution and Pancasila as the basic foundation and philosophy of the Indonesian nation.¹⁴

Political developments in Indonesia are classified into four categories, namely the Transition Era (1945-1959) which features a democratic political system. This era is characterized by liberal democracy, with many parties playing a role in the legislature. This era ended in 1959 after President Soekarno issued a decree which was considered an effort to lead democracy (Old Order). The next era is the Old Order Era (1959-1966). The Old Order displayed an authoritarian political system. The PKI was a single party that played an active role at the time, besides having no political role. After the Old Order Era, it was replaced by the New Order Era (1966-1998). This era initially tended to be democratic, but gradually changed to show an authoritarian political system. A new era then emerged, namely the Reformation Era (1998-present), which began after Soeharto's demise. Changes in political reform are enacted towards a democratic political system and the realization of aspects of popular sovereignty, freedom, equality and justice. Each political period certainly has a form and political system that ultimately also influences the dynamics of Indonesian national law.¹⁵ national legal products in the political system of legislation certainly cannot be separated from the country's political system at that time. Both have a very close relationship. As stated by William Fink "Law

¹³ Djaenab, 'Perkembangan Hukum Islam (Kodifikasi Dan Unifikasi)', *Ash-Shahabab: Jurnal Pendidikan Dan Studi Islam*, Vol. 5.No. 1 (2019), p. 66.

¹⁴ Abdul Aziz MK, 'Hukum Keluarga Islam Dalam Dinamika Sistem Hukum Di Indonesia', *Jurnal Irtifaq*, Vol. 1.No. 1 (2014), p. 7-8.

¹⁵ Solikhul Hadi, 'Pengaruh Konfigurasi Politik Pemerintah Terhadap Produk Hukum', *Jurnal Addin*, 9.2 (2015), p. 387-393.

and politics cannot be separated. Law governs politics, and the law is the product of the political process. Politics is the product of negotiation, bargaining, persuasion, and ultimately majority preference, which is expressed through the ballot box.”¹⁶

Based on history, the codification of Islamic law basically has existed since the Dutch colonial period, it's just that it was full of colonialism politics, like the Compendium which was a product of Dutch policy. During the Old Order period, there were several regulations that reflected the efforts to accommodate Islamic law in national legal material such as the 1960 Basic Agrarian Law until later many laws and regulations were issued in the New Order such as Marriage Law No. 1 of 1974, Government Regulation No. 7 of 1975, Government Regulation concerning Residential Land Ownership No. 28 of 1977, Law No. 7 of 1989 concerning Religious Courts, Religious Minister Regulation No. 2 of 1990 concerning Islamic Marriage Guidelines.¹⁷

The politics of law in the New Order era as contained in the MPR TAP, namely the Guidelines for State Policy since 1973, 1978, 1983, 1988 and 1993. Within that timeframe, the development of national law was directed to form a unificative codification according to the needs of the Indonesian people, especially which is neutral as a social engineer. Likewise, Islamic law is recognized as a legal system that forms a national legal system. Aurel Croissant and Philip Lorenz stated that during the New Order, the codification of Islamic law was largely limited to family, inheritance and banking law.

The Islamic legal principles adopted into the codified state law during Suharto's "New Order" were mostly restricted to family, inheritance, or banking law. Following the process of administrative decentralization since 1999, Indonesian provinces, municipalities, and districts are permitted to pass Sharia-based local regulations, Peraturan Daerah, or "Perda," focusing on moral enhancement "morality regulations"; Like state courts, religious courts (Pengadilan Agama) authorized to apply these regulations are subject to judicial review by the Supreme Court. The state court system, which possesses jurisdiction over criminal and civil law cases, has two additional tiers, starting with state courts (Pengadilan Negara) at the district level and a court of appeals at the provincial level.¹⁸

One effort to assert that Islamic law is part of national law is through proposing the Marriage Law Formulation (RUU) to People's Representative Council of Indonesia (DPR RI). The effort was continued with the submission of a formal legal bill that regulates the existence of a special judicial institution for Muslims in Indonesia. Through Law No. 14 of 1970 concerning Judicial Power, the religious court has recognized its authority as a religious court institution. Based on this law, Islamic law has been applied independently in Indonesia, and is confirmed by the issuance of Law No. 7 of 1989 concerning Religious Courts which is the starting point for optimizing the

¹⁶ Jefferson William Fink, 'Law, Politics, and the Creation of Public Policy: How the Two Can Come Together and Create Better Public Policy', 2016, p. 1.

¹⁷ Moh Hatta, 'Perkembangan Legislasi Hukum Islam Di Indonesia', *Jurnal Al-Qanun*, Vol. 11.No. 1 (2008), h. 143.

¹⁸ Aurel Croissant and Philip Lorenz, *Comparative Politics of Southeast Asia: An Introduction to Governments and Political Regimes, Comparative Politics of Southeast Asia* (Switzerland: Springer, 2018) <<https://doi.org/10.1007/978-3-319-68182-5>>, p. 87.

implementation of Islamic law. This then provided a special opportunity for Muslim intellectuals to draw up a material law for the Religious Courts to provide legal certainty and uniformity of law for the judges, so a Compilation of Islamic Law based on Presidential Instruction No. 1 of 1991 was formed.¹⁹

The renewal of Islamic law during the Transition, Old Order and New Order was slow because the political system at that time was not open to the formation of religious law as a basis for the product of legal legislation. Since the reform era, the direction of national legal politics in accordance with Law no. 10 of 2004 and Law No. 12 of 2011 has differed greatly from previous legal politics. For this reason, the legal politics of the reform era shows a different political face than the old and new order eras in seeing the reality of legal plurality that develops primarily in terms of opportunities and challenges that occur with Islamic law.²⁰ The political configuration of this era is democratic because it maximizes opportunities for the community in determining the direction of state policy.

Politically, Indonesia provides a large space and opportunity for the movement and development of Islamic law in the dynamics of interaction and political aspirations among Islamic political parties, scholars, community leaders, state officials and Muslim scholars, including the political efforts of Islamic legal legislation in Indonesia. Today, we can see the development of parties in Indonesia with their Islamic authority who participate in establishing Islamic law as a source of national law through the legislative realm. The existence of the Indonesian political system shows that although the political aspirations of Islam do not dominate, by looking at the political configuration that is enough to provide opportunities for the development of Islamic law in Indonesia in the form of national legal products that have Islamic power.²¹

Efforts to reform Islamic law basically originate from an existing law, then undergo a quality transformation as a reflection of social interaction. The process of renewing Islamic law is considered as an autonomous matter, but continues to interact with various other elements so that there is a connection. When Islamic law is confronted with social problems, it can interact flexibly to solve existing problems. The concept of adaptation possessed by Islamic law is the main key in interacting, as a rule that is commonly known:

المحافظة علي القديم الصالح والأخذ بالجديد الأصح

“Maintain old ones that are still good and take new ones if considered better”

The rule emphasizes how the concept of Islamic law in the effort to reform law is very adaptive and flexible, so that changes in society can be responded to by Islamic law. It states that the thought of Islamic law is not moving in place but always moving,

¹⁹ Edi Gunawan, 'Pengaruh Teori Berlakunya Hukum Islam Terhadap Pelaksanaan Peradilan Agama Di Indonesia', *Jurnal Ilmiah Al-Syir'ah*, Vol. 15. No. 2 (2017), p. 91.

²⁰ M. Shohibul Itmam, 'Hukum Islam Dalam Pergumulan Politik Hukum Nasional Era Reformasi', *Al-Tahrir: Jurnal Pemikiran Islam*, Vol. 13. No. 2 (2013), <<https://doi.org/10.21154/al-tahrir.v13i2.17>>.

²¹ Sopyan Mei Utama, 'Eksistensi Hukum Islam Dalam Peraturan Perundang-Undangan Di Indonesia', *Jurnal Wawasan Yuridika*, Vol. 2. No. 1 (2018), <<https://doi.org/10.25072/jwy.v2i1.166>>, p. 64.

changing dynamically with the times.²² Guidance and development in Islamic law through political legislation must always be placed within the framework of national legal development.²³

As stated in the National Long-Term Development Plan (RPJP) 2005-2025 that renewal of legal material by always paying attention and considering the applicable legal order and the effect of globalization as an effort in increasing national legal certainty, legal protection, law enforcement and human rights as well as legal awareness. The RPJP emphasizes that planning in the field of law must pay attention to the concept of pluralism, both legal pluralism and social pluralism, so that law enforcement carried out by the state will be orderly and orderly and achieve the ideals of law and the state.²⁴

Politics of Islamic Law Legislation in Indonesia

The journey of national politics has given birth to many laws and regulations especially those with Islamic authority and efforts to reform Islamic law through a prismatic conception as the basis of national legal political work. The Indonesian state has a strong foundation for implementing decisive action in accordance with the aspirations of the people. National law politics is currently built in synergy in accordance with the needs of the community so that it can produce a substantial legal product, structure and legal culture that is in accordance with the legal awareness of the Indonesian people without the shadow of colonial politics.²⁵

Eclectically, the legislators in Indonesia at the central or regional level choose and determine the legal material used as the product of legislation derived from various legal sources, namely Islamic law, customary law and western law. The selection of legal material is considered the most appropriate to be applied in Indonesia given the diversity of the people in Indonesia. Through this electism, Islamic law certainly has great potential to be the main source of legal material retrieval, both as a substantive part of the rules and which are only the essence and nuances of Islam.²⁶

The consistency factor and the nature of transformation possessed by Islamic law have made it possible to remain relevant to social change and the times so that Islamic law in Indonesia has become an important part of Indonesia's national legal system. In addition, external factors from the 1945 Constitution and Pancasila ideology also provide a great opportunity and valuable position for religion in coloring Indonesian legal products, as stipulated in Article 29 paragraph (2) regarding the need to develop legal

²² Alfa Syahriar and Zahrotun Nafisah, 'Comparison of Maqasid Al-Shari'ah Asy-Syathibi and Ibn 'Ashur Perspective of Usul Al-Fiqh Four Mazhab', *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, Vol. 3.No. 2 (2020) <<https://doi.org/10.30659/jua.v3i2.7630>>, p. 190.

²³ Muhammadong, 'Dinamika Pembaharuan Hukum Islam Di Indonesia Dan Tantangannya', *Jurnal Sulesana*, Vol. 8.No. 2 (2013), p. 79-80

²⁴ Akhyar Ari Gayo, 'Dinamika Legislasi Hukum Islam: Analisa Atas Upaya Pembentukan Hukum Perikatan Syariah', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 4.No. 3 (2015), <<http://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/18/20>>, p. 486.

²⁵ M. Shohibul Itmam, 'Hukum Islam Dalam Pergumulan Politik Hukum Nasional Era Reformasi', *Al-Tahrir: Jurnal Pemikiran Islam*, ...p. 288

²⁶ Akhyar Ari Gayo, 'Dinamika Legislasi Hukum Islam: Analisa Atas Upaya Pembentukan Hukum Perikatan Syariah', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, ... p. 490

awareness in Indonesian society, which is predominantly Muslim. evidence of the role of Islamic law in Indonesia.

The form and model of Islamic law reform generally rests on the intra doctrinal reform model or the talfiq method that is to collaborate with the views of schools of dissent. Another way is to take a superstitious model or select the views of scholars who are contextual to the needs of the community. As for the law conservation and patronage of the Islamist-umara political wing, legal reform is carried out through an extra doctrinal reform model. This model is used to analyze legal cases and relate them to the public benefit of the ruling version, so that it gives birth to an eclectic and harmless law. The model is also commonly used through the *maslahah mursalah* or *siyasah syar'iyah* approach.²⁷ The meeting point of interest between Islamists and Umara seen from Umara's tendency to be nationalist is how to accommodate the demands of the Islamists but not directly endanger the state secularity order. Through an Islamist perspective, efforts to implement Islamic law gradually need to be carried out on a massive scale and continue to dominate by those even though they have experienced changes and contextualization.²⁸ Some of the political products of Islamic legal legislation and renewal of Islamic law produced through the legislative body are as follows:

- a. Law No. 1 of 1974 concerning Marriage;
- b. Law No. 7 of 1989 concerning Religious Courts;
- c. Law No. 17 of 1999 concerning Arranging Hajj;
- d. Law No. 34 of 1999 concerning Financial Management of Hajj;
- e. Law No. 38 of 1999 concerning Management of Zakat;
- f. Law No. 44 of 1999 concerning Implementation of Aceh Regional Privileges;
- g. Law No. 8 of 2001 concerning The National Board of Zakat Republic of Indonesia;
- h. Law No. 18 of 2001 concerning Special Autonomy of the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam;
- i. Law No. 41 of 2004 concerning Endowments;
- j. Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts;
- k. Law No. 21 of 2008 concerning Islamic Banking;
- l. Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning Religious Courts;
- m. Law No. 23 of 2011 concerning Management of Zakat;
- n. Law No. 16 of 2019 concerning Amendment to Law No. 1 of 1974 concerning Marriage

The legislation described is a product of Islamic legal legislation through the People's Representative Council as an institution that has authority over the formation of laws. In addition, there are still many other laws and regulations under these laws, such as Government Regulations, Regional Regulations, Ministerial Decrees, Ministerial

²⁷ Nur Hasan, 'Relationship of Maqasid Al-Shari'ah with Usul Al-Fiqh (Overview of Historical, Methodological and Applicative Aspects)', *Jurnal.Unissula.Ac.Id*, 3.2 (2020), 231–45 <<https://doi.org/10.30659/jua.v3i2.8044>>, 239.

²⁸ J.M. Muslimin, 'Hukum Keluarga Islam Dalam Potret Interrelasi Sosial', *AHKAM: Jurnal Ilmu Syariah*, Vol. 15. No. 1 (2019), <<https://doi.org/10.15408/ajis.v15i1.2846>>, p. 45-46.

Circular, and other regulations such as the Compilation of Islamic Law through Presidential Instruction No. 1 of 1991 and Compilation Sharia Economic Law through Supreme Court Regulation No. 2 of 2008. Efforts to form and renew Islamic law legislation continue to be carried out in order to provide legal certainty for the community while filling the legal vacuum, even though the political legislation of Islamic law in Indonesia is still limited to civil law (Islamic criminal law) apply specifically in the area of Aceh), such as marriage and inheritance. The political influence of Western law still influences the development of national law, one of which is in the realm of criminal law, trade, labor, contracts and so on. Although, the essence of religious values is also more or less contained in the legislation mentioned.²⁹

Contribution of Islamic Law in the Development of Indonesian National Law

Bustanul Arifin stated that the prospect of Islamic law is very positive in efforts to develop national law. That is caused culturally, sociologically and even juridically, Islamic law has strong roots. He further stated that Islamic law offers a dynamic and universal concept of law based on human values as khalifatullah not as a homo economicus.³⁰

The development of national legal materials, including Islamic law, is directed at realizing a legal system that serves the national interest through the preparation of comprehensive legal materials, especially the formulation and formation of new regulations, legal development, preparation of national legal frameworks and inventory and preparation of legal elements that apply in the legal system. national sources sourced from the Pancasila and the 1945 Constitution. These efforts need to pay attention to the diversity that prevails in Indonesia, namely customary law, Islamic law and the existence of Western laws that have been accepted nationally. The three legal systems function as the main ingredients in the preparation of a product of the law. However, it is necessary to consider the mandate for the opening of the 1945 Constitution that law is not only a tool but that national development must also be in the right legal framework.³¹

The existence of national law development aims to realize a law that is codified and unificative. Archipelago insight explains the meaning of the unity of the national legal system namely that in Indonesia only applies one state law which serves national interests. Therefore, opportunities for the diversity of applicable legal norms and norms are still a consideration for use in national law. That is the wisdom of the concept of national legal development which states as follows:³²

²⁹ Wetenschappelijke Raad voor het Regeringsbeleid, 'The Development of Law and Legal Systems', in *Dynamism in Islamic Activism* (Amsterdam: Amsterdam University Press, 2006) <<http://www.jstor.org/stable/j.ctt46mth1.7%0Ahttp://about.jstor.org/terms%0Ahttp://creativecommons.org/licenses/by-nc-nd/4.0/>>.

³⁰ Bagir Manan: *Ilmuwan Dan Penegak Hukum (Kenangan Sebuah Pengabdian)* (Jakarta: Mahkamah Agung Republik Indonesia, 2008), p. 345.

³¹ A. Khisni, *Transformasi Hukum Islam Ke Dalam Hukum Nasional (Studi Ijtihad Hakim Peradilan Agama Tentang Pengembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Kontribusinya Terhadap Hukum Nasional)* (Semarang: UNISSULA Press, 2011), p. 9.

³² Moh Hatta, 'Perkembangan Legislasi Hukum Islam Di Indonesia', *Jurnal Al-Qanun*, Vol. 11.No. 1 (2008), h. 161-162.

- a. The goal of development in the field of law, namely “the establishment and functioning of a solid national legal system, sourced from the Pancasila and the 1945 Constitution by taking into account the plurality of applicable legal orders”;
- b. Sociological considerations in the formation of a law or law need to be considered according to the norms and cultural values of the community;
- c. The concept of archipelago insight recognizes the diversity and diversity of customs, culture, law and so on.

Steps taken in the development of national law are through three important things, namely: 1) the maintenance dimension, which is always caring for the existing legal system even though it is not relevant to current developments. That is in order to avoid the legal vacuum as well as the logical consequences of Article 2 of the Transitional Rules of the 1945 Constitution; 2) renewal dimension, which is a stronger effort to perfect legal development so that it can improve existing ones; 3) the dimension of creation, namely the dimension to form a law that had never before existed.³³

According to Bagir Manan as quoted by Syamsuhadi Irsyad that the contribution of Islamic law in efforts to foster national law can be through several ways, namely legislation, judicial jurisprudence, customary law and other legal policies that are not included in statutory regulations. In the path of statutory regulations, Islamic law can occupy various forms of rules ranging from regional regulations to the law. In the jurisprudence path, Islamic law can contribute as a source of law for judges in an effort to find law in order to produce a good decision. In the path of customary law, Muslim societies can make Islamic law as a rooted law in society that is always done in general, so that the law can automatically apply without any legitimacy through the law. It is important to note that many Islamic laws play an important role in fostering social order in Muslim societies and have a positive influence on the survival of life so that efforts are needed by the government so that the transformation of Islamic legal norms is always considered as a source of state law.³⁴ Some of the potentials and opportunities of Islamic law to be used as material for national law development are as follows:³⁵

- a. Existing and current laws such as the Marriage Law, the Religious Courts Act, the Hajj Implementation Law, the Zakat Management Law and others. In addition, there are also several regulations which absorb the value of Islamic law to be used as material for national legal legislation, namely Law No. 2 of 1989 concerning the National Education System, Law Number 25 of 1997 concerning Labor, Law Number 7 of 1992 concerning Banking, Law Number 22 of 1997 concerning Narcotics and many more products of legislation that provide Islamic values in its formation;
- b. Indonesia's predominantly Muslim population (around 87%) can give significant consideration to accommodating Islamic law;

³³ Sirojul Munir, 'Pengaruh Hukum Islam Terhadap Politik Hukum Indonesia', *Jurnal Istimbath*, Vol. 13.No. 2 (2014), p. 152.

³⁴ Sirojul Munir, 'Pengaruh Hukum Islam Terhadap Politik Hukum Indonesia', *Jurnal Istimbath*, Vol. 13.No. 2 (2014), p. 153.

³⁵ Bagir Manan: *Ilmuwan Dan Penegak Hukum (Kenangan Sebuah Pengabdian)* (Jakarta: Mahkamah Agung Republik Indonesia, 2008), p. 346-347.

- c. Awareness of Muslims towards the implementation of daily muamalah aspects which is a reflection of the awareness of carrying out Islamic law as prescribed, such as payment of zakat, the management of waqf and so on;
- d. Government politics that support the efforts of Islamic legal legislation, without this it will be difficult to implement Islamic law into the national legal system.

Islamic law can apply nationally if it has been legitimized into the form of legislation through the legislation process. The urgency of Islamic legal legislation is as a form of national unification of Islamic law, given the diverse composition of Islamic law as well as adjustments to other legal systems in order to find laws that are suitable for Indonesian society. As said that good law is in accordance with the values of these societies. Taking the material of Islamic law into national law is a strong consideration in legislative legislation. Although, Islamic legal material cannot be fully applied to all legislation products. Islamic law still dominates in the fields of civilization only, such as marital law, patronage, zakat, Islamic economics, inheritance. As for the criminal field, Islamic legal material has not been fully applied materially into national legal products. Materially speaking, criminal legislation still uses Western heritage products, even though the Indonesian criminal law has now been redesigned. The criminal law that has been formed in the law and applied is the Qanun Jinayah in Aceh Province, which is still valid as a law.³⁶

Conclusion

The development of Islamic law which has been running for a long time and gives many new nuances in the development of national law. How not, Islamic law in particular has become an important part in the national legal system which means that Islamic law has a great influence on the direction of the development of Indonesian law. The positive influence of Islamic law in the dynamic development of national law can be found in practice, which regulates all aspects of Indonesian people's lives. Thus, Islamic law plays a role in filling the legal vacuum in positive law and Islamic law acts as a source of value that contributes to the rules made through positive legal legislation.

The application of Islamic law in Indonesia as a product of legislation cannot be separated from the political configurations that occur in Indonesia that experience ups and downs. The characteristics of Islamic law always adjust how Islamic law is able to formulate policies towards the product of legal legislation along with the development of politics in Indonesia. The policy formulation formed in the politics of Islamic law legislation is an effort so that the resulting legal products are able to provide legal certainty for the community so that the direction of Islamic law reform from time to time will make a positive contribution and be in accordance with Indonesian society.

The dynamics of the renewal of Islamic law continue to run until now, it can be seen that there are a lot of new laws and regulations or amendments to the old laws, intended so that the applicable law in Indonesia, whether in the form of Islamic law or taking the substantive values of Islamic law only, can be in accordance with the conditions and conditions current social society. At the same time, of course efforts to

³⁶ Muwahid, 'Transformasi Hukum Islam Dalam Sistem Hukum Nasional', *Jurnal Al-Manahij*, Vol. VI.No. 2 (2012), p. 214.

strengthen the political power and bargaining power of Muslims need to be increased. That is because in a democratic system and political power of Indonesia are crucial factors for the achievement and goals of the development of Islamic law in Indonesia.

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