

THE STATE LEGAL POLICIES ON SHARIA APPLICATION IN CHANGING PATTERN OF INDONESIA'S ISLAMIC MOVEMENTS

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Abstract

Legal politics are inextricably linked to power politics. Political dynamics in Indonesia are always colored by the dynamics of Islamic politics, as most Indonesians' political aspirations are influenced by Islamic views. This paper examines the evolution of Islamic law in the modern Indonesian democratic system, particularly after the reform era. Indonesia's democratisation gave rise to freedom of expression and opinion. Even today, Islamic conservatism is growing in Indonesia, but this does not mean that radical Islamist groups are gaining strength. Many political organisations, including Islamic parties and other Islamic movements, have liberated themselves and broadened their organisational philosophies in order to address broader issues and concerns. While maintaining their Islamic identity, some Islamic groups are turning towards the secularization of their goals and objectives as a means of adapting to the changing political environment. Political analysts refer to this development as post-Islamism. The current direction of Islamic politics is more accommodating aspects of democracy but still highlights its Islamic sides. This makes the government more accommodative to laws and regulations based on Islamic teachings.

Keywords: Legal Policies, Shariah Application, Indonesia

Abstrak

Politik hukum tidak lepas dari aspek-aspek politik kekuasaan. Di Indonesia, dinamika politik juga tidak lepas dari politik Islam, karena aspirasi politik sebagian besar masyarakat Indonesia dipengaruhi oleh pandangan Islam. Makalah ini membahas tentang perkembangan hukum Islam dalam sistem demokrasi Indonesia kontemporer, terutama setelah masa reformasi. Demokratisasi Indonesia memunculkan kebebasan berpendapat dan berekspresi. Bahkan saat ini konservatisme Islam di Indonesia semakin meningkat, namun hal itu bukan berarti menguatnya kelompok Islamis radikal. Banyak organisasi politik termasuk partai Islam dan gerakan-gerakan Islam lainnya melakukan pembebasan diri dan melakukan keterbukaan filosofi organisasi mereka untuk mengakomodasi berbagai masalah dan keprihatinan yang lebih luas. Sambil mempertahankan identitas keislamannya, beberapa kelompok Islam beralih ke arah sekularisasi tujuan dan sasaran mereka sebagai sarana untuk beradaptasi dengan lingkungan politik yang berubah. Analisis politik menyebut perkembangan ini sebagai post-Islamisme. Arah politik Islam saat ini lebih mengakomodasi aspek-aspek demokrasi namun tetap menonjolkan sisi keislamannya. Hal ini membuat pemerintah lebih bersikap akomodatif terhadap peraturan perundang-undangan yang berlandaskan ajaran Islam.

Kata Kunci: Kebijakan Hukum, Penerapan Syariah, Indonesia

INTRODUCTION

Indonesia is considered the most important region when we discuss Islam in Asia because Islam is a religion that is embraced by more than 80 percent of the Indonesian population. The Indonesian Muslim population is also the biggest Muslim community in the world, even when it is compared to the whole Muslim population in the Middle East, where Islam came initially and which was a center of Islamic promulgation in the early years of Islam. Moreover, the Muslim community in Indonesia has a special characteristic that is different from other Muslim communities in the world, including Arabian Islam.

The different characteristics of Indonesian Islam may be caused by its remote geographical position from the center of Islam itself, Mecca and Medina in Saudi Arabia. Perhaps this is true, but the most important thing could be the fact that Indonesia is one of the countries in which Islam has not replaced local religions, but it has encountered local customs, traditions, and religions, by which many Muslims accept them as a way to point out that Islam can adapt to any traditions. However, this can result in the prevalence of syncretism practices between Islam and local beliefs. Therefore, the acts of devotion to Islam among Indonesian Muslims are sometimes different from one region to another. Based on this fact, Indonesian Islam is different from Arabian Islam, because the development of Islam in Indonesia has been a result of interaction between the universality of Islamic tenets (foundations), which are acceptable by Muslims around the world, and the locality of customs in Indonesian people's communities.

Moreover, the fact that Islam in Indonesia was not promulgated by conquering the land militarily has become an indication that Islam came to Indonesia

peacefully. It means that the process of Islamic promulgation in Indonesia utilized a peaceful way done mostly by Muslim traders and merchants from overseas. This process, which is known as *penetration pacifique*,¹ in turn, gave Indonesian Muslims a different experience with a peaceable and accommodative way of life.

Indonesian legal system and some of its laws are a legacy of the Dutch colonial era, which is still valid until recent days. Efforts to reform the Indonesian legal system have been made since Indonesia's independence, including an effort to adopt Islamic law. Most Indonesian Muslims believe that carrying out Islamic law is an obligation as a part of their belief, which leads to having a view that the formal implementation of the Islamic law in Indonesia is needed, and their view is not how Islamic law could be possibly made as to the main material for the formation of national law. There are Muslim groups involved in the debate on a discourse of Islamic law implementation in Indonesia, which are divided into at least two groups. A group that stresses the formal-textual approach and the other group that stresses the cultural-substantial approach.

These debates remain preserved in a democratic regime, considering the emergence of Islamic radicalism with Arabian-style in recent years. With such conditions, how can Islamic law contribute to the development of national law in Indonesia? And what is the state policy in implementing Islamic law as demanded by Indonesian Muslims? In order to answer these questions, I will use sociological and political perspectives, because the nature of changing society will influence the form of

¹ Nurcholish Madjid, "In Search of Islamic Roots for Modern Pluralism: The Indonesian Experiences," in *Toward a New Paradigm: Recent Developments in Indonesian Islamic Thought*, ed. Mark R. Woodward (Arizona: Arizona State University, 1996), 92.

sharia implemented in such society, and I also assume that political circumstances have a great role in the development of Islam and sharia in Indonesia.

This study used a qualitative method with a descriptive analysis approach. The theory used in this study is the sociology of law and the politics of legal theory.

Legal theory is a branch of political philosophy, which means that an adequate theory of law has to take a stand on certain contested issues in political philosophy.² An adequate theory of law will account for its important features. These important features will include beliefs and attitudes that people commonly have about the law. Law is a concept that is not the invention of theorists but is one that normal adults are not only familiar with but employ on a frequent if not everyday basis.³ This study will be divided into four sections. The first part will discuss a sociological perspective on Indonesian Islam. The second part will focus on the nature of Islamic law and the role of *fatwas*, which explains how Islamic law interacts with customary law and modernization. The third part will elaborate on Islam and Sharia as a political agenda in Indonesia. In the fourth part, the accommodation of Islam and sharia in recent political and legal realms will be discussed.

DISCUSSION

Indonesian Muslim in a Pluralistic Nation: Sociological Perspective on Indonesian Islam

Even though Islam is embraced by the majority of the Indonesian population, their beliefs and practices, and also a term of their understanding of political Islam, are not

monolithic. According to Geertz, Islam in Indonesia came to the island carried by traders from India, which means it came to Indonesia through an indirect route out of Arabia, which was the center of Islamic orthodoxy.⁴ Moreover, Indonesian Islam was influenced strongly by Sufism, which was generally tolerant of local customs, and it had also been mixed with Indian religious experiences, which gave a strong mystical element.⁵ Having been influenced by Sufism and Indian religion, Islam entered Indonesian regions with mystical and tolerant elements, which made it easily accepted by the Indonesian population, even though it was embedded into Javanese belief.⁶ Indonesian Islamic cultures were also derived from a variety of sources, especially from Persia, India, and southern China.⁷ Hence, Indonesian Islam has a unique characteristic of its own, as Geertz has shown that it is “remarkably malleable, tentative, syncretistic, and, most significantly of all, multivoiced”.⁸ Therefore, it was in this sense when Madjid said that “Indonesia is the least Arabized among major Islamic countries” because it is “the farthest major Muslim nation from the Holy Lands”.⁹

However, direct contact with Saudi Arabia brought a more orthodox interpretation of Islam.¹⁰ Although the scripturalist movement with its Islamic

⁴ Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (London: Yale University Press, 1971), 12.

⁵ Benyamin Fleming Intan, “Public Religion” and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis (New York: Peter Lang, 2006), 35.

⁶ Intan.

⁷ Imtiyaz Yusuf, “The Historical Influence of Persia on Islam in Southeast Asia and the Need for Muslim Unity Today,” *Media Syaria* 15, no. 1 (2013), 1-20.

⁸ Geertz, *Islam Observed: Religious Development in Morocco and Indonesia*, 12.

⁹ Madjid, “In Search of Islamic Roots for Modern Pluralism: The Indonesian Experiences.”

¹⁰ Intan, “Public Religion” and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis, 35.

² Scott J. Shapiro, *Legality* (Cambridge: Harvard University Press, 2011).

³ Joseph Raz, “Can There Be a Theory of Law?,” in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, ed. Martin P. Golding and William A. Edmundson (Malden, MA.: Blackwell Pub., 2005), 6.

purification objectives grew in the second half of the 19th century and became stronger in Indonesian history, it has not been able to change entirely the specific characteristic of Indonesian Islam.¹¹ Therefore, from the socio-religious perspective, it can be said that the social structure of Muslim people in Indonesia has been formed by Islamic tenets that are adapted to local customs, which has happened since the arrival of Islam in Indonesian regions in the 7th century.¹² This phenomenon can also explain why Islamic religious practices have taken different forms in Indonesian society.

However, this does not mean that all local customs can be accepted by Islamic legal jurisprudence, nor all Muslim people would follow customary law provisions by abandoning Islamic law. Not all Indonesian Muslims can distinguish between practices of original Islam or tolerated by Islam and those disapproved by Islam. Therefore, because of cultural influence many Indonesian Muslims practice Islamic precepts mixed with cultural traditions, whether or not they contradict with Islamic injunction. This has made Indonesia's Muslim society diverse in terms of doctrinal orientations and cultural dispositions.

However, the emergence of Islamic radicalism is possibly able to come into existence if some Muslims make the application of Islamic law their political goal because Muslims believe that Islam is not only merely a system of theology, but also it is a basic view of life involving ethics, morals,

and norms which have to be performed in daily life both individually and communally, and in the realm of family and the state. We can see from history that once Islamic law was applied in the Indonesian region, but after the arrival of the Dutch colonialist in that country Islamic law system was replaced by a secular Western legal system by means of political power and Westernized education for Muslim people. Since that time the process of secularization has begun continually even until the state is independent. This condition plays a role in the emergence of Islamic radicalism as a means of refusing the secularization process.

The religious attitudes of Indonesian Muslims are social conspicuousness that changes dynamically. The practice of Islam in rural areas may look very different from that in urban areas. The difference in religious and socio-political attitudes between urban and rural Muslims may be influenced by socio-economic conditions, educational levels, doctrinal orientations, and cultural dispositions. These differences in turn can clarify the difference in Muslims' view of religion-state relations, from which another type of Muslim typology is determined, i.e. political orientation. However, the intention of adopting sharia law into Indonesian society was quite problematic because the sources of sharia mostly come from the Arabian world. The Arabian sharia (Islamic law) is indeed incompatible with Indonesian society which has its customary laws in their daily life. Therefore, attempts should be made to accommodate customary law and Islamic law, both in practice and in theory. The attempts to reconcile the two systems are the manifestation of the general desire to accommodate traditional Indonesian legal practice into Islamic society with their belief in sharia.

How is it possible that sharia (Islamic law), which is supposed to come from divine

¹¹ Intan.

¹² There is no agreement reached by historian when Islam exactly entered Indonesian archipelago. Western historians, such as Pijnappel, believe that Islam entered Indonesia in the 13th century CE and it came from Indian subcontinental. On the other hand, Indonesian and Malaysian historians believe that Islam came to the archipelago initially in the 8th century CE from Persia, India and China. For this debate see, for example, Azyumardi Azra, *Jaringan Ulama Timur Tengah Dan Kepulauan Nusantara Abad XVII Dan XVIII*, 3rd ed. (Bandung: Mizan, 2002).

revelation and have a universal system of belief, can accommodate local cultures and take different forms? The answer is in the Islamic legal methodology (*usul al-fiqh*), by which customary laws and usages (*adat* or *urf* in Arabic) are recognized as determining factors of legal change. In this matter, the role of *Ulamas* (Islamic scholars) is fundamental, such as those associated with the Indonesian Ulama Council (*Majelis Ulama Indonesia* – MUI). Further explanation of this matter is described below.

The Nature of Islamic Law and the Role of Fatwa

The concept of ‘law’ in Islam is wider than the concept of law in Western countries; it encompasses aspects of belief and religious practices that would not be considered ‘law’ in any legal system, besides aspects of laws in general or familiar understanding such as laws on crimes and evidence, marriage, divorce and inheritance, commercial transaction, and many other legal subjects.¹³ The terms “Islamic law” and “sharia”, which are usually used in many Islamic discourses, actually mean *fiqh* in Islamic studies. The *fiqh* is the legal reasoning of Islamic scholars (*Ulama*) based on an understanding and interpretation of the Quran and the Prophet traditions (*Sunnah*), or by other legal principles if the two primary sources do not mention the legal problem faced by the *Ulamas*. In interpreting the Quran and the *Sunnah*, some *Ulamas* sometimes focus only on the texts written in the Quran and *Sunnah*, which are concerning a particular matter that happened when the verses of the Quran were revealed. This is a literal interpretation. However, other Muslim scholars interpret the Quran and the *Sunnah* by referring not only to the texts but also to the social circumstances at the time those divine verses were revealed, which is known as a

contextual interpretation. They use a contextual interpretation of the Quran and the *Sunnah* to adapt the sharia to a particular condition in a place at a certain time, such as a life in Indonesia which has different culture and tradition from Saudi Arabia.

Therefore, it is the reality that Islamic law applied in one country to another is different. The diversity of Islamic law can be regarded as that Islamic law is flexible to change and accommodative to the social circumstances. The interpretation of the Quran itself is subject to change over time and across regions. Islamic legal jurisprudences acknowledge the different opinions in legal matters because the nature of Islamic law itself is interpretable in accordance with the sociological context to suit the need of people’s lives. Moreover, the *Ulamas*’ understanding and interpretation of the Quran that results in *fiqh* can be considered as their responses to the cultures and traditions faced by Muslim people. Thus, *fiqh* or Islamic law is the product of Muslim scholars’ thoughts which are derived and deducted contextually from the Quran and the *Sunnah*, and this characteristic differentiates between *fiqh* and the Quranic legal principles (legal provisions of the Quranic texts). In this sense, Islamic law or *fiqh* is actually not divinely revealed because there is a mutual relationship between Islamic law and social life. And because of that, the development of Islamic law can be viewed from a social perspective.

From that understanding, the point of view in Islamic law discourse should be based on the assumption that Islamic law is not a finished legal system that is taken for granted from the divine revelation without any interpretation or roles of the human being. Weiss points out that sharia “is not given to man ready-made, to be passively received and applied; rather, it is to be actively constructed based on those sacred texts which are its

¹³ Jamila Hussain, *Islam: Its Law and Society* (Annandale, N.S.W.: Federation Press, 2011), 28.

acknowledged sources”.¹⁴ Just like other legal systems, Islamic law is also a creation of human beings (i.e. the *‘Ulamas*) in which Muslim scholars use their reasoning in getting the meaning of a legal provision from the Quran by incorporating sociological circumstances and the context of the Quran’s legal provisions. Therefore, it is not surprising that there are many divergent legal opinions in Islamic law. The divergent opinions are actually a consequence of interpretation that is influenced by situations of places, times, and societies because different methodologies are used in interpreting the Quran’s legal provisions.

The significance of social context in interpreting the Quran’s legal provisions can be seen in the practice of Muslim scholars in the early years of Islam (around the first to the second century After Hijra (AH) or 8th century CE) such as Abu Hanifah (80-150 AH), Malik ibn Anas (93-179 AH), and al-Shafi’ie (150-204 AH). They are founders of schools of Islamic law to which almost all Sunni Muslims refer their religious practices to those schools (*madhhab*). Abu Hanifah with his logical reasoning, Malik Ibn Anas with principles of public good, and al-Shafi’ie with his analogical methodology are examples of the wide range of Islamic legal methodologies to interpret the Quran’s legal provision, by which those Muslim scholars did interact with social context and cultural circumstances where they lived.¹⁵ Therefore, local customs such as cultures and traditions practiced by societies can be adopted by Muslims as a legal consideration in applying sharia laws. Muslim legal scholars have realized centuries ago that there has been a

significant influence of local traditions on Islamic law.¹⁶ Even though Muslim scholars do not consider local traditions as an independent source of law, they have realized the effectiveness of traditions in the process of interpreting the Quran’s legal provisions. Even in the Islamic legal methodology, local traditions, called *al-‘urf*, are accepted as legal propositions which are categorized as reasoning by logic besides *qiyas* (analogical deduction), *istihsan* (equity), and *istislah* (the principles of the common good).¹⁷ Al-Jauziya states that “Islamic law can change in accordance to the change of times, places, circumstances, and customs”.¹⁸ Therefore, local traditions indeed have a place in the Islamic law discourse, as long as the traditions are considered as good and not contrary to the commonsense, because Quran, in Muslim belief, has a spirit of justice that is compatible with any society.

By *ijtihad*, Muslim scholars can convince their community to be aware of the democratic and modernized society in which they live and to enable Muslims to live as good practicing Muslims who are at the same time good citizens of their own countries, whether in democratic, secular countries such as Singapore and Australia or the democratic, religious countries like Indonesia and Malaysia.¹⁹ In some Islamic countries in the

¹⁴ Bernard Weiss, “Interpretation in Islamic Law: The Theory of Ijtihād,” *The American Journal of Comparative Law* 26, no. 2 (1978): 199–212.

¹⁵ Muhammad ‘Alī al- Sayis, *Tārikh Al-Fiqh Al-Islāmī* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1957), 104. Husain Hamid Hassan, *Al-Madkhal Li Dirāsah Al-Fiqh Al-Islāmī* (Beirut: Dār al-Fikr al-‘Arabī, 1981), 33.

¹⁶ Ahmad Ibn Idrīs al- Qarafi, *Syarh Tanqih Al-Fusūl Fī Ikhtisār Al-Mahsūl Fī Al-Uṣūl* (Cairo: Al-Matba’ah al-Khairiyyah, 1973), 337.

¹⁷ Jalāl al-Dīn ‘Abd al-Rahman al- Suyūṭī, *Al-Aṣḥab Wa Al-Nazā’ir* (Beirut: Dār al-Kitāb al-Arabi, 1971), 99. Abd al-Rahman al- Sabunī, Khalifah Babakr, and Mahmud Tantawi, *Al-Madkhal Ilā Al-Fiqh Wa Tārikh Al-Tasyri’ Al-Islāmī* (Cairo: Dār al-Muslim, 1982), 138.

¹⁸ Ibn al-Qayyim Al-Jauziyyah, *I’lam Al-Muwaqqi’in ‘an Rabb Al-‘Alamin* (Beirut: Dār al-Fikr, 1977), III: 14. Subhi Mahmassani, *Falsafat Tasyri’ Al-Islami*, ed. Farhat J. Ziadeh (Leiden: E.J. Brill, 1961), 201.

¹⁹ Ann Black and Jamila Hussain, “Responding to the Challenge of Multiculturalism: Islamic Law Courses in Law School Curricula in Australia,” *Flinders Journal of Law Reform* 9 (2006): 205.

Middle East, the contextual interpretation may be rarely incorporated, and they may prefer to use the literal meaning of the Quran to be implemented in society. Consequently, Islamic intellectual thoughts do not develop well.²⁰ Moreover, the repressive regimes, which routinely suppress those who think differently from the ruling elite, tend to apply such kind of sharia law forcefully to govern almost all aspects of citizens' lives, from criminal laws to personal matters such as the way people dress up in the public sphere. Saudi Arabia, for example, has promoted the Wahhabi version of Islam and sharia which is a particularly conservative strand utilizing a literal meaning of legal provisions of the Quran.²¹

Unlike Saudi Arabia, Indonesia has many cultural and local religious heritages, which highly influence the community particularly related to social and religious practices. Before the arrival of Islam in the archipelago, customary law or *adat* was the only authoritative legal instrument by which problems arising among indigenous people were resolved, and the regulation and application of customary law were different from one *adat* area to another.²² This condition of course also influences the form of Islamic law in Indonesia in almost all aspects of law, from family law to the law of rituals and beliefs (*ibadat*). Moreover, the geographical location of the Indonesian archipelago makes Indonesian people easily influenced by foreign cultures from around

the world, which enriches the cultural diversity of the country.

This fact has made Islamic law in Indonesia experience an encounter with local cultures or customary laws. It has been generally accepted that many Muslim people practice mixed religious rituals (*ibadat*), which are regarded as syncretism because it is considered a reality of people's beliefs. However, in the past, some Islamic movements had objectives to purify Islamic doctrines and practices from un-Islamic influences. Such movements were supposedly influenced by the Wahhabism doctrine brought by Muslim pilgrims from Saudi Arabia. *Paderi* movement of radical Islam in the 18th century is one of the examples of Islamic movements that had Islamic purification purposes. Even in contemporary Indonesia today, efforts to spread conservative Islam through Wahhabi teachings are still being pursued by several Islamist groups. However, such movements have never completely succeeded, because it is related to the belief of people that have practiced for a long time. Moreover, most Indonesian Muslim scholars leave ritual rules to individuals to practice according to their own beliefs, whether purely Islamic or syncretistic religious rituals, because some Indonesian people embrace Islam as a religious belief that there are some similarities in the concept of divinity with the local religions.

The adaptation to the local customs also happens in the field of *muamalat* (Islamic law regarding interaction among people, such as family law, inheritance, economic transaction, criminal law, etc.). In this field, the process of *ijtihad* is more widespread than that of *ibadat*, because the branch of *muamalat* is very large. It encompasses almost every legal aspect, other than *ibadat* (rituals), which is not wholly explained or outlined by the

²⁰ Black and Hussain.

²¹ Black and Hussain.

²² According to Van Vollenhoven, there are at least 19 main areas of *adat* law in Indonesia: 1. Aceh; 2. Tanah Gayo, Alas and Batak; 3. Nias; 4. Tanah Minangkabau; 5. South Sumatera; 6. Tanah Melayu; 7. Bangka and Belitung; 8 Kalimantan; 9. Minahasa; 10. Gorontalo; 11. Tanah Toraja; 12. South Sulawesi; 13. Ternate island; 14. Maluku Ambon; 15. Irian; 16. Timor island; 17. Bali and Lombok; 18. Central Java, East Java and Madura; 19. West Java. Soerjono Soekamto, *Pengantar Hukum Adat Indonesia* (Jakarta: Rajawali Press, 1993), 55-57.

sources of Islamic law (the Quran and the *Sunnah*).

The adaptation of Islamic law or sharia into local customs became a necessity. However, this needs legitimation from Muslim scholars, as religious authority, in the form of fatwas. The fatwas of *Ulamas* have a crucial role in the social life of Indonesian society since they are decisive authorities for the survival of Muslims and are the spearhead for Muslims in solving various problems, either concerning the government, state institutions, intellectuals, and the general public. The fatwas constitute an attempt to transform Islamic law in the contemporary era experienced by Muslims and the Indonesian nation.²³ Therefore, fatwas have an important role in the lives of Muslims. Fatwas or stipulations of Muslim scholars are a way to break the vacuum in the thought and development of Islamic laws. A mufti, or one who issues a fatwa, is likewise important and can play a vital role in facilitating the practice of Islam and contextualizing it. In nations with majority Muslim populations such as Indonesia, there are authoritative and recognized individuals and organizations that are responsible for the issuance of fatwas.²⁴

In this regard, the existence of the MUI is highly strategic for the benefit of Muslims in the societal and national context. The MUI is the advisory body “to guide the Islamic community and government.” The MUI’s Articles of Association state that the MUI performs its duties to provide fatwas and advice, both to the government and Muslims, associated with religious problems in

particular, and all the problems facing the nation in general. The MUI is also expected to foster the spirit of *ukhuwah* (brotherhood) among Muslims, acting as Muslims in interfaith talks. According to the third MUI chairman, KH. Hasan Basri, MUI serves “as a watchdog to ensure that there will be no laws in the country that are contradictory to the teachings of Islam”.²⁵

The MUI, along with other Indonesian Muslim organizations, contributed greatly to the Islamic legal transformation and thoughts. The thoughts are based on *fiqh* formulations with emphasize the relationship between Islamic and customary laws. Islamic legal theory recognizes the significance of local customs as supplementary sources of Islamic laws, which means that the people who embrace Islam as a religion may continue to practice their customs as long as they do not contradict the injunction of primary sources of Islamic law (Quran and *Sunnah*).²⁶ This theory has been widely accepted by most Indonesian Muslim scholars. Therefore, it is reasonable to say that Islamic law in Indonesia is very different from that of Saudi Arabia, the place where Islam originated.

Islam and Sharia as a Political Agenda

Attempts to apply sharia law publicly at the national level actually can be traced back to the early years of Indonesian independence in 1945 when Islamists made efforts to order Islam to become the state’s ideology of Indonesia. The aspiration of Indonesian Muslim society to adopt sharia law is actually a result of the social and political transformation process within

²³ La Jamaa, “Fatwas of the Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia,” *Indonesian Journal of Islam and Muslim Societies* 8, no. 1 (2018): 29–56.

²⁴ Mohammad Abdalla, “Do Australian Muslims Need a Mufti? Analyzing the Institution of Ifta in the Australian Context,” in *Law and Religion in Public Life: The Contemporart Debate*, ed. Nadirsyah Hosen and Richard Mohr (London: Routledge, 2011), 214.

²⁵ Jamaa, “Fatwas of the Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia.”

²⁶ Nur Ahmad Fadhil Lubis, “The State’s Legal Policy and the Development of Islamic Law in Indonesia’s New Order,” in *Shari’a and Politics in Modern Indonesia*, ed. Azyumardi Azra and Arskal Salim (Singapore: ISEAS, 2003), 48.

Islamic society itself. It can be seen from two main approaches to Muslims' interests in Islamic law (sharia), structural approach and cultural approach. The former emphasizes adopting Islamic law into social and political life. This approach utilizes political parties, particularly the Islamic one, and promotion of Islamic ideas in order to be implemented in the Indonesian legal system; whereas the latter emphasizes on socialization and internalization of Islamic tenets into Indonesian Muslim society without political support. This approach is actually intended to bring Islamic precepts into social life as a source of society's ethics and morals.

The proponents of the cultural approach to implementing sharia law in Indonesia have won the ideological contestation. It was through their efforts, in my opinion, that the accommodative style of Islamic law implemented in Indonesia comes into existence in the democratic era. This can happen because the cultural approach utilized accommodative aspects of Islamic teaching which put forward Islamic tenets more substantially than symbolically. This approach emphasizes Islamic values in constructing national laws as a means of regulating Muslim contemporary life. This notion is basically based upon the reality that Indonesian society is pluralistic not only in terms of the nation but also in terms of Muslim society itself.²⁷

The theoretical framework of this cultural movement, which set out from the reality of the pluralistic nation, made this approach more popular and it has been followed by more many people.²⁸ They believe that what is important for Indonesian Muslim society is Islam with its values but not Islamic institutions using Islamic

symbols. Many Indonesian *Ulamas*, such as Abdurrahman Wahid and other Indonesian Muslim thinkers, urged greater accommodation of Islamic principles and state policy to bring Islam and the state into a new understanding with each other.²⁹ This understanding is very important because for the great majority of the Indonesian people Islam is considered a national identity that plays important role in almost all aspects of life, including in governing the state.³⁰

The other approach to implementing sharia law in Indonesia is the structural approach, which is, not only in recent Indonesian development but also throughout Indonesian history, largely supported by Islamists or more conservative Muslim organizations. Many conservative Muslim movements are influenced by Wahhabism.³¹ Conservative Muslim movements are generally more political in nature than religious.³²

During the New Order era, political Islam and conservative Muslim organizations remained dormant. There were some movements, mostly underground, which supported Islam as their political ideology.³³ Eventually, after the toppling down of the New Order regime, many Muslims raised the issue of reviving and reintroducing the Jakarta Charter and a new debate had begun. The Jakarta Charter was discussed again extensively in the 2001 and 2002 Constitution amendment sessions, even though the matter

²⁹ Suardi Kaco H., "Gus Dur's Thought about Accommodation of Islamic Law and Culture," *Alburriyah: Jurnal Hukum Islam* 6, no. 2 (2021): 158–67.

³⁰ Howard Federspiel, "Islamic Values, Law and Expectations in Contemporary Indonesia," *Islamic Law and Society* 5, no. 1 (1998): 90–117.

³¹ Azyumardi Azra, *Jaringan Global Dan Lokal Islam Nusantara* (Bandung: Mizan, 2002), 262.

³² M.B. Hooker, "The State and Shari'a in Indonesia," in *Shari'a and Politics in Modern Indonesia*, ed. Azyumardi Azra and Arskal Salim (Singapore: ISEAS, 2003), 38.

³³ Saeful Umam, "Radical Muslim in Indonesia: The Case of Ja'far Umar Thalib and the Laskar Jihad," *Explorations in Southeast Asian Studies* 6, no. 1 (2006).

²⁷ Ija Suntana, "From Internalization To Formalization: Islamic Law Development in Indonesia," *The Islamic Quarterly* 64, no. 1 (2020): 115.

²⁸ Nurcholish Madjid, *Islam, Kemodernan Dan Keindonesiaan* (Bandung: Mizan, 2013), 204-214.

was resolved once again by shelving the famous seven words because there was no majority supporting it.³⁴ However, this is not the end of efforts to give the sharia force of law in Indonesia.³⁵ In fact, since the fall of Soeharto, many of Indonesia's mass organizations, including Muslim organizations, established and developed in a wide range of regions from small cities to national levels. According to Bruinessen, Muslim organizations are more vibrant than ever and engage in a wide range of activities.³⁶ Furthermore, Bruinessen says that they appear to be re-conquering parts of the public sphere that had in the 1990s come under almost hegemonic control of Islamist discourses.³⁷

Several conservative Muslim organizations share similar concerns in some aspects, particularly the implementation of sharia, and they also have similar agendas of challenging the domination and influence of Western countries.³⁸ Even though each organization is separate, with most probably having a connection network, one interesting thing about them is that almost all of those organizations are led by Arab-educated people, and even Arab descendants, which has been interpreted by some scholars as indicating a trend toward 'Arabization' of Islam in Indonesia.³⁹ Moreover, even though these Islamist groups exert only a limited influence among Indonesian Muslims as a whole, they would try to make use of any possible issue related to Islam and Muslims for their purposes.⁴⁰

The rise of Islamist groups constitutes the strongest sign of the expansion of political Islam in the contemporary Indonesian political landscape. It can be explicitly seen when they challenged the legitimacy of the secular system adopted by the Indonesian state, which they perceived as responsible for the ongoing economic and political crisis, proposed the sharia as an alternative basis for the state, and emphasized its superiority to any other system.⁴¹

By using the enhanced authority of regional parliaments under the regional autonomy law (the Law No. 22/1999, amended by the Law No. 32/2004), the Islamist groups have the opportunity to get elements of the sharia adopted into regional regulations (by-laws),⁴² without amending the constitutional provisions imposing sharia law to Indonesian Muslims. The regional regulations that contain Islamic injunctions (sharia) are concerned with three broad sets of issues: first, public order and social problems such as prostitution, consumption of alcohol, and gambling; second, religious skills and obligations, such as reading the Quran, attending Friday prayers and paying *zakat*; and third, religious symbolism, including Muslim dress.⁴³ The autonomy law promised widespread devolution of powers to the regions. Bell said that by this law regional governments would be more democratic and independent from the central government because in the New Order era Soeharto held Indonesia together with an

³⁴ Martin Van Bruinessen, "Post-Suharto Muslim Engagements with Civil Society and Democratisation," 2003.

³⁵ Bruinessen.

³⁶ Bruinessen.

³⁷ Bruinessen.

³⁸ Umam, "Radical Muslim in Indonesia: The Case of Ja'far Umar Thalib and the Laskar Jihad."

³⁹ Umam.

⁴⁰ Azyumardi Azra, "Recent Developments of Indonesian Islam," *The Indonesian Quarterly* 32, no. 1 (2002): 14.

⁴¹ Noorhaidi Hasan, *Laskar Jihad: Islam, Militancy, and the Quest for Identity in Post-New Order Indonesia* (New York: Southeast Asia Program Publications, 2006), 23.

⁴² Bruinessen, "Post-Suharto Muslim Engagements with Civil Society and Democratisation."

⁴³ Arskal Salim, "Muslim Politics in Indonesia's Democratisation: The Religious Majority and the Rights of Minorities in the Post-New Order Era," in *Indonesia: Democracy and the Promise of Good Governance*, ed. Ross H. McLeod and Andrew MacIntyre (Singapore: ISEAS, 2007), 126.

iron fist; therefore, in the reform and democratic era, ethnic, religious, political, and economic tensions had surfaced, and many people thought that some degree of autonomy should be granted to the regions.⁴⁴ In this case, Manan said that regional autonomy is closely related to democratization and it needs an institution or a system to perform democracy in a region.⁴⁵

As Manan said above that initially the regional autonomy and decentralization were aimed to involve the regional government in Indonesia's democratization process, and the regional autonomy was not designed to strengthen the sentiments of local identities. However, when the democratization and liberalization were opened to the regional level, it was even regarded by Islamist groups as an opportunity to return the so-called 'local identities' and 'local values' which were considered lost when the New Order regime with its centralized authority hold the power. Moreover, under law No. 22/1999 (and No. 32/2004) provincial and local governments are legitimate to enact regulations that seek to overcome social problems and maintain public order.⁴⁶ Therefore, the regional autonomy and decentralization policy has resulted in the rise of locals which has affected virtually every aspect of Indonesia's politics, economy, and society.⁴⁷

Based on that circumstance, in my opinion, some Islamist groups caught the moment to implement their agenda by

making a reason of reviving the 'local identity or 'local values' become a basis for applying sharia-based regional regulations in some provinces. The reform era opened the way for new areas of political participation, new actors and power constellations, and new forms of political interaction, which to some extent created a new form of authoritarianism that is ruled by 'the majority.

In my view, since the majority of the population is Muslim in a particular region, enacting regulations that seek to overcome social problems and maintain public order may be interpreted as applying regulations that comply with Islamic norms, which are supposedly practiced by the majority in that region. In other words, the regional autonomy laws are regarded by Islamists as an opportunity to lift the issue of local identity which is interpreted as the Islamic morals and precepts. The interpretation of Islamist groups that 'local identity is 'Islamic identity is allegedly based on the reality of the Muslim majority in their regions. In turn, the Islamic identity is brought into the form of regulations, which are known as sharia-based regional regulations.

Therefore, it seems that the increasing number of sharia-based bylaw applications in some regions in Indonesia has begun since the Regional Autonomy Law was enacted in 1999, particularly after some Islamist groups erupted in the political arena of the post-New Order era. The sharia-based bylaws have been applied in some Muslim majority regions, and the proponents of bylaws claim that those come from the Muslim aspiration. However, according to Buehler, it is the elites' political interests that make these policies, not the societies.⁴⁸

From the political situation which formed the background of the adoption of

⁴⁴ Gary F. Bell, "The New Indonesian Laws Relating to Regional Autonomy: Good Intentions, Confusing Laws," *Asian-Pacific Law and Policy Journal* 2, no. 1 (2001).

⁴⁵ Bagir Manan, *Menyongsong Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum FH UII, 2004), 59.

⁴⁶ Salim, "Muslim Politics in Indonesia's Democratization: The Religious Majority and the Rights of Minorities in the Post-New Order Era."

⁴⁷ Edward Aspinall and Greg Fealy, "Introduction: Decentralisation, Democratization and the Rise of the Local," in *Local Power and Politics in Indonesia: Decentralisation and Democratization* (Singapore: Institute of Southeast Asian Studies, 2003), 2.

⁴⁸ Michael Buehler, "Subnational Islamization through Secular Parties: Comparing 'Shari'a' Politics in Two Indonesian Provinces," *Comparative Politics* 46, no. 1 (2013).

sharia bylaws, it is not surprising if the ratification of such bylaws in some regions would have been seen as corresponding to the issue of Islamist groups' attempts in applying sharia laws. It has also to be situated in the context of political changes after the demise of the New Order regime in 1998 when political activists in Islamic groups sought to establish Muslim political dominance, and politicians sought to enhance their prospects by identifying with the interests of Muslim voters.⁴⁹ From this time, according to Salim, the temptation for politicians to appeal to the sentiments of the Islamic majority, and for governments to seek legitimacy by an appeal to Islam, has been very strong.⁵⁰

The growing number of regional regulations containing Islamic tenets in some Indonesian regions is an indicator that there has been a significant radicalization and Arabization process among Muslims in Indonesia. Moreover, the kind of Islam they try to impose on the Indonesian Muslim community is a literal interpretation and understanding of Islam, and they also insist that Muslims should practice only what they call the "pure" and "pristine" Islam as practiced by the Prophet Muhammad and his Companions (*Sahabah*, or the *Salaf*).⁵¹ In this case, they exercise the *Salafi* movement, which is the same type of movement as the Wahhabism in Saudi Arabia,⁵² whose

religious goal is the purification of Muslims from vices and sin.⁵³

However, large mainstream Muslim organizations, such as the *Nabhdlatul Ulama* (NU) and the *Muhammadiyah* have voiced their objection to radical ways. The national leaders of the NU and the Muhammadiyah state that the image of Islam has been politicized by certain radical groups for their vested interests; such radicalism demonstrated by the groups represents the political influences and not the Islamic way of thinking.⁵⁴ Therefore, the radical Muslim movements in Indonesia exert only a limited influence among Indonesian Muslims as a whole, but their voices seem to have been strong and influential enough because of their show-off and being overlooked by mass media. Notwithstanding, the context of political changes after the demise of the New Order in 1998 has given the political activists of Islamist groups a big opportunity to put their agendas which becomes a challenge not only to the democratization process but to the national legal system.

The Accommodation of Islam and Sharia

Along with Indonesia's democratization efforts, the development of Muslim society and Islamic politics has also changed the direction of its goals to adjust to these conditions. Islamic groups are more accommodating to the values of democracy and modernity, without having to leave their Islamic identity. Many Islamic organizations including Islamic political parties and Islamist groups have opened up their organizational philosophy to accommodate wider problems and concerns. While maintaining their Islamic identity, some Islamic groups are turning towards the secularization of their goals and objectives as a means of adapting

⁴⁹ Salim, "Muslim Politics in Indonesia's Democratization: The Religious Majority and the Rights of Minorities in the Post-New Order Era."

⁵⁰ Salim.

⁵¹ Azra, "Recent Developments of Indonesian Islam."

⁵² The followers of the Wahhabism prefer to call themselves as Salafi, because according to them this sect basically refers to the practices of the Salaf (the first generation of Muslims) rather than just to the views of Ibn Abd al-Wahhab, the founder of the Wahhabism. Umam, "Radical Muslim in Indonesia: The Case of Ja'far Umar Thalib and the Laskar Jihad."

⁵³ Ira M. Lapidus, *A History of Islamic Society* (New York: Cambridge University Press, 2002), 211.

⁵⁴ Azra, "Recent Developments of Indonesian Islam."

to the changing political environment. Political analysts refer to this development as post-Islamism.⁵⁵ Post-Islamism is a project to conceptualize and strategize the rationale and modalities of transcending Islam in social, political, and intellectual domains.⁵⁶ It emerged as an alternative to the more rigid ideology of Islamism.

Islamism as a movement ideology is more often translated into political ideas and strategies, from democratic to undemocratic. Islamism is an ideology and movement that strives to establish some kind of an Islamic order; it can take the form of an Islamic state, sharia law, or values derived from Islamic morality.⁵⁷ However, in the current era of Indonesia, Islamic groups do not yet have figures who can unify their political agenda. Without independence in reading social situations, Islamist groups will continue to depend on the power of politicians—including those who are secular. This can be seen in the 2014 general election when Islamic groups depended on Prabowo Subianto, a secular party leader with a secular background. Thus, post-Islamism can be said to be a hybrid approach because it tries to combine Islam with democracy and modernity. Post-Islamism is an attempt to find a fusion between religiosity and rights, faith and freedom, Islam and liberty.⁵⁸

Law and religion are entwined in the constitutional foundation of the nation. Both law and religion relate ethical principles to life as we live it. Such common goals suggest the possibility of competition or conflict between the two or that they should perhaps be distinguished according to some criteria for

determining their respective proper spheres.⁵⁹ In pluralistic legal regimes, various forms of law pertained to the various sphere of life. As law becomes increasingly tied to the exclusive jurisdiction of the nation, state law gained supremacy while religious law retained a diminishing sphere of responsibility for clerical affairs. Religious disputes still need to be settled, even if not all of these end up in the courts. People adhering to particular faiths seek guidance on how best to live.

The Islamic movements and Islamic politics in the realm of society and the state in contemporary Indonesia show different changes compared to previous ones. In the previous era, Islam was interpreted as personal piety which then formed a shared mindset that the decline of Muslims was due to outside influences, namely the secular system that was brought to the Islamic world. This kind of thinking ultimately demands that the secular system be replaced with a system based on sharia. Nowadays, Islamic thought movements, including Islamic politics and sharia law in Indonesia, are leading to a view of the compatibility of Islam with the values of modernity. This view projects the vision of Islam and the belief of its people that Islam is needed in modern times by implementing it in accordance with the times.

Islamic political thought and movement are directed toward a strategy that goes beyond what Islamism aspires to in the social, political, and intellectual fields. The Islamic movement is also directed to the adjustment of religion with personal rights, belief with freedom, and Islam with liberty. This view brings Islam into a pluralistic reality with various meanings, and it accommodates aspects of democratization, pluralism, multiculturalism, and human

⁵⁵ Azlan Tajuddin, "Development, Democracy, and Post-Islamism in Indonesia," *International Journal of Social Science Studie* 11, no. 4 (2016).

⁵⁶ Asef Bayat, "The Coming of a Post-Islamist Society," *Critique: Critical Middle Eastern Studies* 5, no. 9 (1996): 43–52.

⁵⁷ Bayat.

⁵⁸ Bayat.

⁵⁹ Nadirsyah Hosen and Richard Mohr, *Law and Religion in Public Life: The Contemporary Debate* (London: Routledge, 2011), 1.

rights.⁶⁰ Thus, post-Islamism has not only developed in the fields of politics and law, but also academic traditions, popular culture, and even the daily life of Indonesian Muslims. The dynamics of the post-Islamism movement in Indonesia gave rise to the idea that the public sphere is a democratic space, which is homogeneous, secular, and liberal.⁶¹

The development of Islamic politics has consequences for the government to make policies or enact laws that are more privileged to Islam and even tend to discriminate against other religions and their adherents in Indonesia. Experts have observed that the state, through the Ministry of Religion, has played a role in practices that discriminate against other recognized religions. The trend nowadays is that there are many cases of state intervention in Islamic religious affairs, and it is even as if state affairs and religious affairs are no longer dichotomous. Experts consider constitutional practice in Indonesia to be more Islamic or at least to show a tendency to prioritize Islam over other religions.⁶² This can be seen from the fact that the legislative and executive institutions have also enacted laws that only apply to Muslims, which are explicitly intended to incorporate Islamic legal norms into national law, such as Law No. 23 of 2011 on zakat management, Law No. 33 of 2014 on halal product assurance, Law No. 8 of 2019 on Hajj and Umrah Management that confirm the role of the Ministry of Religion as an institution that organizes Muslim affairs. Moreover, they also passed laws that, while making no direct reference to

Islam, appear to adopt concepts or principles broadly linked to the more conservative teachings of Islam, such as regulations on Islamic banking including the compilation of Islamic economic laws.

CONCLUSION

The development of the Indonesian Muslim society goes hand in hand with the country's democratization efforts. Therefore, Islamic politics has changed the direction of its goals to adjust to these conditions. The Islamic movements in the realm of political life in contemporary Indonesia show different changes compared to previous times. Islamic groups are more accommodating to the values of democracy and modernity, without having to leave their Islamic identity. Many Islamic organizations, including Islamic political parties and Islamism groups, have opened up their organizational philosophy to accommodate various societal issues and wider concerns. While maintaining their Islamic identity, some Islamic groups are turning towards the secularization of their goals and objectives as a means of adapting to the changing political environment. At present, Islamic movements, including political Islam and aspirations for the application of sharia law in Indonesia, lead to a view of the compatibility of Islam with the values of modernity. This view projects the vision of Islam and its belief that Islam is needed in modern times by implementing it according to its time. Post-Islamism has not only flourished in the fields of politics and law, but also in academic traditions, popular culture, and even in the daily life of Indonesian Muslims. The dynamics of post-Islamism in Indonesia gave rise to the idea that the public sphere is a democratic space, with homogeneous, secular, and liberal characteristics.

⁶⁰ Noorhaidi Hasan, "Piety, Politics, and Post-Islamism: Dhikr Akbar in Indonesia," *Al-Jami'ah Journal of Islamic Studies* 50, no. 2 (2012): 381.

⁶¹ Bani Syarif Maula, "Post-Islamisme Dan Gerakan Politik Islam Dalam Sistem Demokrasi Indonesia," *Al-Danlab: Jurnal Hukum Dan Perundangan Islam* 9, no. 1 (2019): 90–116.

⁶² Melissa Crouch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (London: Routledge Curzon, 2014).

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