

# ISLAMIC LAW IN INDONESIA (Tradition, Thought, Political Law and Legal Products)

*Muhammad Hifdil Islam\**

---

## **Abstract:**

*Introduction The enforcement of Islamic law in Indonesia has experienced ups and downs along with the political laws imposed by state power. Even behind all that, is rooted in the socio-cultural forces that interact in the political decision-making process. Nevertheless, Islamic law has progressed continuously. both through political infrastructure and political superstructure with the support of the socio-cultural force.*

**Keywords:** *Islamic Law, Indonesia*

---

---

\* Dosen Tetap Institut Ilmu Keislaman Zainul Hasan

## A. Introduction

Different views and interpretations in the diversity of Muslim understanding of the nature of Islamic law have implications in the application angle.<sup>1</sup> M. Atho Mudzhar for example explains the different perspective in the field of Islamic legal thought is divided into four types, namely *fiqh* books, decision the decisions of religious Courts, the laws and regulations in Muslim countries and the ulama's fatwa.<sup>2</sup> These four factors are believed to have had a considerable influence in the transformation of Islamic law in Indonesia. Moreover Islamic law has actually been in effect since the first arrival of Islam in Indonesia, where the stigma of law that is categorized into customary law, Islamic law and Western law. While Islamic law is seen in two ways. First, Islamic law is valid by formal juridical, meaning that it is codified in national hukuin structure. Secondly, Islamic law that applies normatively is Islamic law which is believed to have a sanction or a legal equivalent for the Muslim community to implement it. On this basis, this paper will examine Islamic law in Indonesia in the perspective of thought, tradition, legal politics and legal products.

## B. Political Thought Of Islamic Law In Indonesia

Ismail Sunny, illustrating the politics of law as a process of acceptance of Islamic law is described in two periods first, period of persuasive source in which every Muslim is believed to accept the enforcement of Islamic law; and secondly, the period of authority source in which every Muslim believes that Islamic law has the power to be exercised. In other words, Islamic law can be applied in a formal juridical manner when codified in national legislation.<sup>3</sup> To develop the process of transformation of Islamic

---

<sup>1</sup> The diversity in question is the difference of Muslim understanding in understanding Islamic law which has two tendencies, namely Islamic law is synonymous with shari'a and identical with *fiqh*. This is happening not only among *Fiqh* scholars, but also among academics and practitioners of Islamic law.

<sup>2</sup> M. Atho Mudzhar, *Pengaruh Faktor Sosial Budaya terhadap Produk Pemikiran Hukum Islam*, dalam *Jurnal Mimbar Hukum* No. 4 tahun II (Jakarta: Al-Hikmah dan Ditbinbapera Islam, 1991), him. 2 1-30.

<sup>3</sup> Isma'il Sunny, *Tradisi dan Inovasi Keislaman di Indonesia dalam Bidang Hukum Islam*, dikutip dan Bunga Rampai Peradilan Islam di Indonesia, Jilid I (Bandung: Ulul Albab Press, 997), hlm. 40-43.

law into the supremacy of national law, the participation of all parties and institutions concerned, as well as the relationship of Islamic law to the state power body which refers to the established policy of political law (*adatrechts politiek*). Political law is a product of interaction among political elites based on various socio-cultural groups. When the Islamic political elite has a strong bargaining power in the political interaction, the chances for the development of Islamic law to be transformed are greater.

The legal politics of the New Order period as set forth in the Decree of the People's Consultative Assembly (MPR), namely the Guidelines of State Policy (GBHN) since 1973, 1978, 1983, 1988 and 1993. The period of 1973- 1988 the development of national law directed for codification and unification law according to the public interest. Certain forms of written law are codified and unqued, especially neutral laws that function for social engineering. Similarly for Muslims, the unification of Islamic law gains recognition in the national legal system.<sup>4</sup>

The transformation of Islamic law in the form of legislation (*Takhrij al-Ahkâm fi al-Nash al-Qânun*) is the product of interaction among the Islamic political elites (ulama, public figures, religious officials and Muslim intellectuals) with the ruling elite among politicians and state officials. For example, the enactment of Marriage Law No.1/1974 the role of the Islamic elite is quite dominant in approaching the elite at the legislative level, so that the Marriage Bill No.1/1974 can be codified. The procedure of political decision-making at the legislative and executive levels within the case of Islamic legal legislation should refer to the legal politics held by the state power agency collectively. A law may be established as a codified written rule if it has gone through the political process of the legislative and executive bodies of state power, and meets the requirements and design of appropriate legislation.<sup>5</sup>

The approach to the conceptual procedure of Islamic legal legislation as proposed by A. Hamid S. Attamimi is that the government and the

---

<sup>4</sup> Teuku Mohammad Radhie, „Politik dan Pembaharuan Hukum”, dalam *Prisma* No. 6 tahun II (Jakarta: LP3ES, 1973), hlm. 4; M. Yahya Harahap, ‘Informasi Materi Kompilasi Hukum Islam: Memposisikan Abetraksi Hukum Islam’ dalam *Mimbar Hukum*, No. 5 Tahun II, Jakarta: Al-Hikmah dan Ditbinbapera Islam, 1992), him. 17-2 1.

<sup>5</sup> Amak F.Z., *Proses Undang-undang Perkawinan*, (Bandung: Al-Ma’arif. 1976). hlm. 35-48

Parliament holds power in the formation of laws. It is mentioned in Article 5 Paragraph (1) of the 1945 Constitution that the President shall have the power to form laws with the approval of the People's Legislative Assembly. "While in the explanation of Article 5 Paragraph (1) of the 1945 Constitution stated that, except executive power, The House of Representatives runs the legislative power within the state."<sup>6</sup>

Based on this view, the DPR (Dewan Perwakilan Rakyat/ legislative level) should give approval to each Draft Law proposed by the Government. This is in line with the explanation of Article 20 paragraph (1) of the 1945 Constitution, although the DPR does not have to always agree to all the draft laws from the government. The existence of the DPR must in fact provide a consent or agreement in the sense of accepting or rejecting the draft law.

### C. Political Dynamics Of Islamic Law In Indonesia

The transition of power and the government of the Old Order to the New Order was marked by the decline of Sukarno and the presidency post-coup G30/S/PKI in 1965.<sup>7</sup> The political event had implications for the emergence of a tense political crisis in the form of mass movements demanding the dissolution of the PKI and the demands for revamping the political system and restoration of state security.<sup>8</sup>

The peak occurred in 1966, at which time the situation and domestic stability of Indonesia increasingly chaotic. In turn, Soekarno issued a Letter of Command for March (Supersemar) to General Soeharto which essentially contained orders for the restoration of national security and censure, the consolidation of all military and civilian personnel, and the reporting of all duties and responsibilities of the warrant.<sup>9</sup> The domestic

---

<sup>6</sup> A. Hamid S. Attamimi, "Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemenntah Negara: Suatu Anaiisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waku Pelita 1-Pelita IV", Disertasi Doktor Universitas donesia (Jakarta: UI, 1990), him. 120-135.

<sup>7</sup> Mochtar Masoed, *Ekonomi dan Struktur Politik Orde Baru 1966-1971*, (Jakarta: LP3ES, hlm. 47-53.

<sup>8</sup> Joeniarto, *Sejarah Ketatanegaraan Republik Indonesia*, (Jakarta: Bumi Aksara, 1990), Ke-3, hlm. 140.

<sup>9</sup> Harold Crouch, *The Army and Politics in Indonesia*, (Ithaca: Cornell University Press, 1978 Bab. VII.

political process when it went very fast. General Soeharto directly or indirectly becomes the holder of control over any political process. He took the necessary steps for the acceleration and restoration of the social, political and economic conditions of the day, until the MPRS General Assembly in June - July 1966.

MPRS Decree No, TX/MPRS/1966 became the constitutional basis for Supersemar and at the same time the MPRS General Assembly in 1967 succeeded in displacing Sukarno and the presidency in the form of revocation of the president's mandate by MPRS in MPRS Tap no. XXXIII/MPRS/1967. This has paved the way for Suharto to rise to the pinnacle of appointment to become the second president set forth in MPRS decree No.XLITI/MPRS/1968.<sup>10</sup>

The birth of the New Order is supported by students and students who are members of the Indonesian Students Action Unity (KAMI) and the Indonesian Youth and Student Action Unity (KAPPI), whose members are predominantly Muslim. It can be said that they became the spearhead of the collapse of the Old Order government. At the beginning of the New Order many changes were made to the irresponsible bureaucratic tendencies inherited from the Old Order. Using a political format that pivots on the close ties of military and technocrats for the purpose of implementing development and realizing a stable and strong government. Military and bureaucratic powers are the political machinery to organize the social and political life of society, so that the New Order through these two components becomes a single political force in Indonesia.<sup>11</sup>

The political format created is:<sup>12</sup> First, the role of the bureaucracy is very strong because it is run by the military after the democracy collapse is guided, so he becomes the only major player in the national political stage. Second, the effort to build a force of socio-political organization as an extension of the armed forces and government in the form of Golkar as the single majority of political organizations during the New Order

---

<sup>10</sup> Fuad Hasan, *Meramu Intelegensi dengan Intuisi: Di antara Para Sahabat Pak Harto*, (Jakarta: PT. Citra Lamtorogung Persada, 1991), him. 26 1-262.

<sup>11</sup> Lance Castle, *Birokrasi dan Masyarakat Indonesia*, (Surakarta: Hapsara, 1983), hlm. 27.

<sup>12</sup> Affan Gaffar, *Politik Indonesia: Tradisi Menuju Demokrasi*, (Yogyakarta: Pustaka Pelajar, 1999), hlm. 37.

era. Third, taming radicalism in politics through the process of mass depoliticization, such as applying the concept of floating mass and NKK/BKK in higher education. Fourth, more emphasis on security approach (Security Approach) and welfare approach (Welfare Approach) in socio-political development; Fifth, mobilize public support through corporate social and community-based organizations.

The touch of Islam and politics during the New Order era has actually started since the New Order adopted a policy of modernization, in which the stigma of the development of the Indonesian mindset and way of view and the process of cultural transformation and social change adopted more and more what has happened in Western countries. The direction of development in Indonesia that previously led to Eastern Europe reversed course to Western Europe and Amerika. Many found among intellectuals and intellectuals began to be familiar with Western ideas.

Meanwhile, for the modernization of Islam, it is a dilemma because it is faced with two choices, namely to support the modernization of the New Order means to support Westerners alike, while on the other hand, refusing means that Muslims will lose the opportunity to take an active role in the national development program.<sup>13</sup>

Pro-contra attitude among the majority of Muslims in responding to modernization gave birth to the following three patterns: First, the pattern of apology, a form of Islamic rejection of all values that are rooted in the discourse of modernization. Even this first pattern assumes that modernization is identical with westernization and secularization; Secondly, the adaptive pattern, which is a form of accepting some of the values of modernization that are not contrary to Islamic teachings; Third, the creative pattern, a form of dialogical attitude that prioritizes the intellectual approach in response to modernization. And the third pattern, it seems that the third pattern becomes more dominant because the intellectual approach developed by the modernist is considered more representative to build the modern Islamic order in Indonesia. This happens as the antithesis of conservative Muslims, which leads to the formal ideology and depoliticization of Islam which resulted in tensions with the New Order regime.

---

<sup>13</sup> M. Dawam Rahardjo, *Intelektual, Intelegensia dan Perilaku Politik Bangsa*, (Bandung: Mizan, 1993), hlm. 38 1-382.

The provocative pattern of political linkage is considered not the best way for Islamization in Indonesia, since the population of Indonesia is not entirely Muslim that can be incorporated into the frame of the political system of honor. In turn, the idea of cultural Islam emerged as the middle way for the Islamic ummah to continue to play its role in national politics. At least, the truth of this approach began to produce the opening of the way for Muslims to the political Islamization of the New Order in the late 1970s.<sup>14</sup>

The New Order's political policies that put Islam in a marginal position on the national political scene in turn have given rise to tensions between Islam and the state. History has noted that the dynamics of Islamic and state relations during the New Order era experienced a shift that is antagonistic, critical to accommodative reciprocal. The antagonistic relationship (1966-1981) reflects the hegemonic pattern of relationship between Islam and the New Order government. The state of a strong state playing the influence of political ideology down to the level of the lower society has been contrasted with the reactive attitude of the Islamic community resulting in an ideological conflict and at the same time putting Islam in opposition.<sup>15</sup>

Later on in the critical reciprocal relations (1982- 1985) the santri attempt to re-reflect the worldview they and transform themselves to display the intellectual side in the Indonesian political arena. At this stage rational-pragmatic choices have spawned mutual understanding of the interests of Islam and the New Order government. In the period 1982-1985 some Muslims began to accept a single principle in the foundation of state ideology and mass organizations and politic organization.

While the accommodative relationship (1985-2000) the relationship between Islam and the state feels more harmonious in which Muslims have entered as part and the political system of elites and bureaucracy, this pattern of accommodative relations is felt in the form of channeling the aspirations of Muslims to build social, political, economic and a

---

<sup>14</sup> M. Syafi'i Anwar, *Politik Akomodasi Negara dan Cendekiawan Muslim Orde Baru: Sebuah Retrospeksi dan Refleksi*, (Bandung: Mizan, 1995), hlm. 32-235; Lihat juga Fachry Ali dan Bachtiar Effendi, *Merambah Jalan Baru Islam: Rekonstruksi Pemikiran Islam Indonesia Masa Orde Baru*, (Bandung: Mizan, 1985), hlm. 108-110.

<sup>15</sup> M. Syafi'i Anwar, *Pemikiran dan Aksi Islam Indonesia: Sebuah Kajian Politik tentang Cendekiawan Muslim Orde Baru*, (Jakarta: Paramadina, 1995), hlm. 9.

culture rooted in the noble values of religion (Islam) and the culture of the nation framed in the integralistic philosophy of Pancasila and the 1945 Constitution.<sup>16</sup>

However, specifically in view of the development of Islamic law in Indonesia, the opportunity of Muslims to gain their rights in the pattern of antagonistic relations is more apparent. The weakness of the Muslim position, such as the formulation of the Marriage Law No.1 of 1974, the flow of trust in the Pancasila Guidance and Appraisal Guidelines (P-4), right-wing issues, ethnic, religious and racial issues (SARA), the issue of Christianity and policy capitalistic economy. The Muslim protest of Marriage Law No.1/1974, followed by PP No.9/1975, was considered the New Order's attempt to shift the Islamic Law and the root of the social fabric of Islamic society in Indonesia.<sup>17</sup>

It can be argued that the relationship between Islam and the state at the antagonistic stage is more of an event that gives rise to a pattern of harmonious relationships of ideological conflict. If earlier during the Old Order of Islam more seemed to crystallize within the framework of Masyumi political organization, firmly with the secular nationalist ideology (PNI Soekarno) and the extreme left of the PKI, then during the New Order Islam split and fragmented from the Masyumi frame. This is due to the tight policies of the New Order government in responding to the re-emergence of strong political ideology of Islam.

The hesitation of the aspirations of Muslims in obtaining the rights of legislation and law was apparent when it was legalized by the Marriage Law No.1/1974 which was followed by PP No.9/1975. Further stipulated also the provisions on Wakaf in PP No.28/1977. Not stop there, Muslims at the legislative level again questioned the ideology/belief flow in the 1945 Constitution as the official religion recognized by the state. And the most crucial is the will of Muslims to legislate the Bill of Religious Courts (RUUPA) for the implementation of Islamic judiciary in Indonesia.<sup>18</sup>

---

<sup>16</sup> Ibid., hlm. 238-239.

<sup>17</sup> Hasanudin M. Saleh, *HMI dan Rekayasa Asas Tunggal Pancasila*, (Yogyakarta: Pustaka Pelajar, 1996), hlm. 88-90.

<sup>18</sup> Ahmad Sukarja, "Keberlakuan Hukum Islam dalam Tata Hukum Indonesia" dalam Cik Hasan Bisri (ed.) *Bunga Rampai Peradilan Islam I*, (Bandung: Ulul Albab Press, 1997), hlm. 24-25.

Then on the pattern of critical reciprocal relations, Muslims are aware of the need for a strategy to pursue the structural-bureaucratic path of the state system. At this stage, Islamic intellectuals and politicians must have the courage to come into direct contact with the New Order government.<sup>19</sup> Through the structural-functional approach, Muslims have made relatively rapid progress in the entry of Islamic circles in all civilian government systems from the center to the regions, The New Order within the framework of Islamic civilian accumulation and the military.

In an accommodative pattern, as an antithesis and pattern of previous relations Islam almost dominates all the joints of government and state. It is noted that the socio-political reality of Muslims is so important to play its role on the national stage. The presence of ICMI, December 8, 1990, diyalcini as a new milestone in the strengthening of political Islamization in Indonesia, and increasingly visible when the accommodating interests of Islamic Shari'a through UUPA No.7/1989 as well as placing the Religious Court as a state judicial institution that is regulated in the Basic Law No Judicial Power .14/1970, followed by the Banking Act No.10/1998 (substitution of Law No.7/1992), Zakat Law No.38/1999, KHI Presidential Decree No.1/1991.<sup>20</sup> Articulation and political participation among Moslems thus appear to start and conflict approach, critical reciprocal approach to accommodative approach. So it can be assumed to make Islam as a political deed can only be pursued in two ways that is repressive and accommodative (structural-functional). At least this is an illustration of the paradigm model of the relationship between Islam and the state in Indonesia.

#### **D. The Idea Of Islamic Law Transformation In Indonesia**

The idea of transformation of Islamic law can be seen and the science of the state. Explained that for countries that embrace the theory of people's sovereignty, then the people who become the highest political policy. Similarly a state based on God's sovereignty, the sovereignty of

---

<sup>19</sup> M. Syafi'i Anwar, *Pemikiran dan Aksi*, op. cit., him. 241.

<sup>20</sup> Cik Hasan Bisri, "Peradilan Agama dan Peradilan Islam" dalam Cik Hasan Bisri. *op. cit.* him. 116-117.

state/power (*rechtstaat*) and law-based state (*machtstaat*), depends on the political style of the law of state power itself.<sup>21</sup>

Rousseau misal nya in the theory of sovereignty of his people say that the purpose of the state is to enforce the law and guarantee freedom and its citizens. Rousseau's opinion has the understanding that freedom within the limits of legislation. While the law here is entitled to make it is the people themselves. On that basis, Rousseau argues that a law should be formed by a general will (*valonte generale*), in which all the people directly take part in the process of forming the law.<sup>22</sup> In the context of statehood in Indonesia the will of the people is generally implemented into a state supreme body of the People's Consultative Assembly (MPR) and the House of Representatives (DPR). Thus, the emergence of a written understanding that the executive makes a draft law before it is enacted for its enforcement must first be approved by the DPR.

When Indonesia proclaimed its independence on August 17, 1945, before there had been a cross-contestation of the ideology to be embraced by the State of Indonesia. The idea of Prof. Dr. Soepomo on the philosophy of integralistic state in the session of BPUPKI dated May 13, 1945 has opened the discourse of Indonesian society pluralism to choose one of the three schools that he proposed, namely; (1) Individualism idea; 2) Collectiveism idea; and (3) Integralistic Idea.<sup>23</sup> In the history of Indonesia, politicians wanted integralistic ideology as the state ideology and Pancasila and the 1945 Constitution were then agreed upon as an ideological basis and the structural foundation of the Unitary State of the Republic of Indonesia. The legal implications of any form of legislation are required to be more inclusive and must accommodate the public interest of the Indonesian people. This is what in turn will give rise to ideological conflicts between Islam and the state.

---

<sup>21</sup> Maria Farida Indrati Soeprapto, *Ilmu Perundang Undangan: Dasar-dasar dan Pembentukannya*, (Yogyakarta: Kanisius, 1998), hlm. 64-65.

<sup>22</sup> Soehino, *Ilmu Negara*, (Yogyakarta: Liberty, 1980), hlm. 156-160; Bandingkan dengan Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, (Yogyakarta: Kanisius, 1982), hlm. 71

<sup>23</sup> Moh. Yamin, *Naskah Persiapan UUD 1945* (Jakarta: Reproduksi Setneg. tt.). Jilid I, hlm. 26-28; Lihat pula dalam tulisan sejenis tentang Naskah Persiapan UUD 1945 jilid I, cet ke2 (Jakarta: Prapanca, 1971), him. 113 dan A. Hamid S. Attamimi, *op. cit.*, hlm. 82-83.

The law is declared as the highest legislation, in which sanctions can be included and at the same time can directly apply and bind the public in general. The term law in anti-formal and material is a translation and *wet in formelezin* and *wet in materielezin* known Dutch. In the Netherlands the law in anti formil (*wet in formelezin*) is a decision made by Regering and the Generaal Staten together (*gejamenlijk*), regardless of whether the contents of *regeling* or regulation (*beschikking*). This is viewed in terms of its formation or who formed it.

Whereas the law in the material sense (*wet in materielezin*) is any general binding decision (*algemeen verbindende voorschnften*), whether made by the high Regering and Staten Generaal agencies together, as well as by other lower institutions such as Regering Kroon , The Minister, Provinde and Garneente each of whom formed the Algemene Maatregel van Bestuur, the Ministeriele Verordening, the Provinciale Wetten, the Gemeeteljkewetten, and other general binding rules (*Aloemeeri Verbiridende Voorschnfteri*).<sup>24</sup>

If the *wet* understanding is identified with the President and the People's Legislative Assembly, both formally and materially less precise. In Indonesia only known terms of law are identified with *wet*. In other words, the law in Indonesia established by the president and with the approval of the People's Legislative Assembly is called the equivalent of the legal charge both formally and materially and generally.

Its relationship to the main law is unknown in the Indonesian legal system. Based on the 1945 Constitution as the constitution of the state of Indonesia. Article 5 paragraph (1) has stipulated that all laws in Indonesia are the main law of equal standing, and are under the hierarchy of legal norms and constitution of the 1945 Constitution. Therefore, it can be understood that the Constitution ) is clearly different from the law. This can be seen in the Indonesian legal system as stipulated in MPR Decree No.XX/MPRS/1966 as follows: The 1945 Constitution, MPR Decree, Laws, Government Regulations, PPs, Presidential Decrees, Kepmen, Perda Tk. I, Perda Tk. II, and so on.<sup>25</sup>

In addition, various types of legislation in the country of Indonesia in

---

<sup>24</sup> Maria Farida Indrati Soeprapto, *op. tt.*, hlm. 93-95; A. Hamid S. Attamimi, *op. ct.*, hlm. 211.

<sup>25</sup> *Ibid.*, hlm. 92-103.

a hierarchical arrangement also resulted in differences in functions and material content of various types of legislation. In general, the functions and laws are: First, to carry out further regulation on provisions in the 1945 Constitution explicitly; Second, further general arrangement of explanations in the body of the 1945 Constitution; Third, further arrangement on MPR Tap; and Fourth, the setting in the subject matter field.<sup>26</sup>

While the material content of the law has been introduced by A. Hamid Attamimi with the term *het eigenaarding orderwerp der wet* which is also used by Thorbecke in *Aantekening op de Grondwet* which *tertkennya* as follows:

Grondwet borrowed the understanding of *wet* only and the person/legal entity that formed it. Grondwet allows open-ended questions about what in our country should be set by *wet* and what may be defined in other ways. As with the other *grondwets*, Grondwet (even this) is silent (to) formulate the content material typical for *wet* (*het eigenaarding orderwerp der wet*).<sup>27</sup>

If Thorbecke's opinion is equivalent to the 1945 Constitution, this view is true, because the 1945 Constitution is determined on who has the right to form a law. In Article 5 paragraph (1), the decisive is that the president holds the power to form a law with the approval of the People's Legislative Assembly, and the matter of the contents of the law is not mentioned at all. Nevertheless, jurists say that the content of the law can not be determined by the scope of the material since all laws are the realization of people's aspirations (popular sovereignty). On that basis, virtually all material of charge can become law, unless the law does not design to manage or decide.

When examined more closely the specificity of the law and other regulations is the law established and established by the president with the approval of Parliament. So. the legal content of the law will serve as guidelines for other regulations under it. The guidelines for knowing the content of the law can be determined through three guidelines,

---

<sup>26</sup> *Ibid.* hlm. 113-115.

<sup>27</sup> Hamid S. Attamimi, *op. cit.*, hlm. 205 dan tulisannya tentang Materi Muatan Peraturan Pemerintah Perundang-undangan dalam *Majalah Hukum dan Pembangunan* Jakarta, 1979).

namely: First, and the provisions in Batang Tuhuh UUD 1945 there are about 18 issues (18 articles) about human rights, the sharing of state power, and the establishment of organizations and tools state completeness; Secondly, based on the state's insight based on the law/rechtstaat) that begins and the absolute power of the state (polizeistacit, the continued formation of the state based on the narrow/liberal law), based on formal law (rechtstaat formal), and the state based on the modern material/social law (rechtstaat social material), and Third, based on the governmental perspective of the constitutional system, in which the exercise of state power and law and others must refer to the basic norms and the Constitution. , the meaning is Pancasila and the 1945 Constitution. From these formulations, a conceptual picture of the codification of Islamic law as a law (takhri al-ahkam fi al-nash al-taqnin) is required to follow constitutional procedures and in line with legal norms and the ideology of law in Indonesia Codification and unification of Islamic law as well as the drafting of new legislation directed to ensure legal enforcement in the community.

## **E. Products Of Islamic Law In Indonesia**

Since the 1970s until now the direction of the dynamics of Islamic law and the process of transformation of Islamic law has run synergistically in line with the dynamics of politics in Indonesia. The three phases of the relationship between Islam and the state during the Daru Order were the antagonistic phase of conflict, the critical reciprocal phase with the nuances of Islamic structuralization, and the accommodative phase with the harmonious nuances of Islam and the state, opened the door to the Islamization of social, cultural, political and legal institutions Islam in Indonesia.

In this regard, the concept of development of Islamic law which quantitatively affects socio-cultural, political and legal order in society. Then changed direction that is secar qualitatif accommodated in various set of rules and legislation legislated by state and government agency. The concretization of this view is hereinafter referred to as the transformation effort (taqnin) of Islamic law into the form of legislation.

Among the products of laws and regulations of Islamic legal nuance,

generally have three forms: First, Islamic law that is formal or material using the pattern and approach of Islam; Secondly, Islamic law in the taqwin process is manifested as the sources of material content of the law, in which its principles and principles pervade every product of legislation and legislation; Third, Islamic law is formally and materially transformed by persuasive source and authority source.

Until now, the position of Islamic law in the legal system in Indonesia increasingly gain juridical recognition. The recognition of the enforcement of Islamic law in the form of regulations and legislation which have implications for the existence of social, cultural, political and legal institutions. One of them is the promulgation of Marriage Law no. 1/1974.

Abdul Ghani Abdullah argued that the enactment of Islamic law in Indonesia has got a constitutional place based on three reasons: First, philosophical reasons, Islamic teachings are the views of life, moral ideals and ideals of Muslim majority in Indonesia, and it has an important role for the creation the fundamental norm of the Pancasila state); Second, the Sociological reason. The historical development of Indonesian Islamic society shows that legal ideals and legal awareness of Islamic teachings have a continuous level of actuality; and Thirdly, the juridical reasons contained in articles 24, 25 and 29 of the 1945 Constitution provide a place for the formal validity of Islamic juridical.<sup>28</sup>

Implementation and the above three reasons, for example is the establishment of UUPA No.7/1989 which is juridically associated with regulations and other legislation, such as Law No.2/1946 Jo, Law No.32/1954, Emergency Law No.1/1951, Basic Agrarian Law No.5/1960, Law No.14/1970, Law no. 1/1974, Law No.14/1985, Perpu Zero/SD 1946 and No.5/SD 1946, PP.No.10/1947 Jo. PP.No.19/1947, PP. No.9/1975, PP. No.28/1977, PP. No.10/1983 Jo, PP. No.45/1990 and PP. No. 33/1994. The rulings of the Religious Courts are also related to Law No.2/1986 on General Courts, Law No.5/1986 on State Administrative Courts, and Law No.7/1989 challenging Religion Law.<sup>31</sup> In more concrete facts, there are some products of the assembly: a legislation

---

<sup>28</sup> Abdul Ghani Abdullah, „Peradilan Agama Pasca UU No.7/1989 dan Perkembangan Studi Hukum Islam di Indonesia” dalam *Mimbar Hukum* No. 1 tahun V (Jakarta: al-Hikmah & Ditbinpera Islam Depag RI, 4, hlm. 94 106.

that formally or materially has a legal juridical content of Islamic law, among others:

- a. UU no. 1/1974 on the Law of Marriage
- b. UU no. 7/1989 on the Court of Agama (Now Act No. 3,72006)
- c. UU no. 7/1992 on Syari'ah Banking (Now Law No. 10/1998)
- d. UU no. 17/1999 on the Implementation of Hajj
- e. UU no. 38/1000 on Pangelolau, Zakat, Infak and Shadaqah (ZTS)
- f. UU no. 44/1999 on the Implementation of Special Autonomy for Nangroe Aceh Darussalam
- g. Political Law of 1999 which regulates the provisions of Islamic parties
- h. UU no. 41/2004 on Wakaf

In addition to its statutory level, there are also other regulations under the Act, including:

- 1) PP No.9/1975 on the Implementation Guidelines of the Law on Marriage Law
- 2) PP No.28/1977 regarding Ownership of Land Owned
- 3) PP No.72/1992 on the Implementation of Banks Based on Profit Sharing Principle
- 4) Presidential Instruction No. 1/1991 on Compilation of Islamic Law
- 5) Inpres No.4/2000 on the Handling of Special Autonomy Issues in NAD

And the many products of legislation containing the material of Islamic law, the most phenomenal event is the passing of Law No.7/1989 on Religious Courts. Imagine, the Religious Judiciary has long been known since the colonial era (Mahkamah Syar'iyah) until the independence period, from the Old Order to the New Order, only in the late 1980s of Law No. 7/1989 can be ratified as law. Whereas Law No.14/1970 in article 10-12 expressly acknowledges the position of Religious Court and its existence and authority.

The existence of Law No.7/1989 on Religious Courts and Presidential Decree No.1/1991 on the Compilation of Islamic Law as well as a juridical basis for Muslims to solve civil problems. Whereas the struggle of Muslims within 45 years since the time of the Old Order

and 15 years since the New Order era, is a long struggle that requires patience and hard work until the passing of Law No.7/1989 on 29 December 1989.

In line with the changing political climate and democratization at the beginning: in the 1980s to the present day, there has been a positive signal for the progress of Islamic law development in all dimensions of community life. The structural and harmony approach in the process of Islamization of social, cultural, political, economic and legal institutions, has opened the door wide for the transformation of Islamic law in the national legal system. Just how the political position of Muslims is not dim and lost direction, so he: etap exist and play a bigger role in raising and advancing a new Indonesia that is just and prosperous.

The presence of ICMI in the early 1990s was in fact an inevitable social and political reassurance. Where the great role that the Islamic political elite represents in the bureaucratic environment, as well as the active role of Islamic figures in various Islamic societal organizations, is considered very important especially in responding to the will of Muslims collectively. In other words, the existence of various laws and regulations based on Islamic law, not an easy matter, such as reversing the two palms, but all that has been done through the political process in a long historical range.

## **F. Conclusion**

Listening to the history of the transformation of Islamic law, laden with various historical, philosophical, political, sociological and juridical dimensions. In reality Islamic law in Indonesia has experienced ups and downs along with the politics of law applied by state power. This is all rooted in the socio-cultural power of the majority of Muslims in Indonesia has interacted in the political decision-making process, resulting in a variety of political policies for the interests of the Islamic community.

Therefore, in the last part of this writer can be said that Islamic law in Indonesia has experienced a dynamic and sustainable development, both through the channels of political infrastructure and superstructure in line with the reality, demands and support, and the will for the

Islamic law transformation into the system national law<sup>1</sup>. The historical evidence of Islamic law products from colonial times to independence and reformation is a fact that can never be challenged. May the Islamic law still exist in tandem with the establishment of Islam itself.

## BIBLIOGRAPHY

- A. Hamid S. Attamimi, "Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara: Suatu Anaiiis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waku Pelita 1-Pelita IV", Disertasi Doktor Universitas donesia (Jakarta: UI, 1990), him. 120-135.
- Abdul Ghani Abdullah, "Peradilan Agama Pasca UU No.7/1989 dan Perkembangan Studi Hukum Islam di Indonesia" dalam *Mimbar Hukum* No. 1 tahun V (Jakarta: al-Hikmah & Ditbinpera Islam Depag RI, 4 , hIm. 94 106.
- Affan Gaffar, *Politik Indonesia: Tradisi Menuju Demokrasi*, (Yogyakarta: Pustaka Pelajar, 1999), hlm. 37.
- Ahmad Sukarja, "Keberlakuan Hukum Islam dalam Tata Hukum Indonesia" dalam Cik Hasan Bisri (ed.) *Bunga Rampai Peradilan Islam I*, (Bandung: Ulul Albab Press, 1997), hlm. 24-25.
- Amak F.Z., *Proses Undang-undang Perkawinan*, (Bandung: Al-Ma'arif. 1976). hIm. 35-48
- Cik Hasan Bisri, "Peradilan Agama dan Peradilan Islam" dalam Cik Hasan Bisri. *op. cit.* him. 116-117.
- Fuad Hasan, *Meramu Intelegensi dengan Intuisi: Di antara Para Sahabat Pak Harto*, (Jakarta: PT. Citra Lamtorogung Persada, 1991), him. 26 1-262.
- Hamid S. Attamimi, *op. cit.*, hlm. 205 dan tulisannya tentang Materi Muatan Peraturan Pemerintah Perundang-undangan dalam *Majalah Hukum dan Pembangunan* Jakarta, 1979).
- Harold Crouch, *The Army and Politics in Indonesia*, (Ithaca: Cornell University Press, 1978 Bab. VII.
- Hasanudin M. Saleh, *HMI dan Rekayasa Asas Tunggal Pancasila*, (Yogyakarta: Pustaka Pelajar, 1996), hlm. 88-90.
- Isma'il Sunny, *Tradisi dan Inovasi Keislamart di IndonesIa dalam Bidang Hukum Islam*, dikutip dan Bunga Rampai Peradilan Islam di Indonesia, Jilid I (Bandung: Ulul Albab Press, 997), hlm. 40-43.

- Joeniarto, *Sejarah Ketatanegaraan Republik Indonesia*, (Jakarta: Bumi Aksara, 1990), Ke-3, hlm. 140.
- Lance Castle, *Birokrasi dan Masyarakat Indonesia*, (Surakarta: Hapsara, 1983), hlm. 27.
- M. Atho Mudzhar, *Pengaruh Faktor Sosial Budaya terhadap Produk Pemikiran Hukum Islam*, dalam *Jurnal Mimbar Hukum* No. 4 tahun II (Jakarta: AI-Hikmah dan Ditbinbapera Islam, 1991), him. 2 1-30.
- M. Dawam Rahardjo, *Intelektual, Intelegensia dan Perilaku Politik Bangsa*, (Bandung: Mizan, 1993), hlm. 38 1-382.
- M. Syafi'i Anwar, *Pemikiran dan Aksi Islam Indonesia: Sebuah Kajian Politik tentang Cendekiawan Muslim Orde Baru*, (Jakarta: Paramadina, 1995), hlm. 9.
- M. Syafi'i Anwar, *Politik Akomodasi Negara dan Cendekiawan Muslim Orde Baru: Sebuah Retrospeksi dan Refleksi*, (Bandung: Mizan, 1995), hlm. 32-235; Lihat juga Fachry Ali dan Bachtiar Effendi, *Merambah Jalan Baru Islam: Rekonstruksi Pemikiran Islam Indonesia Masa Orde Baru*, (Bandung: Mizan, 1985), hlm. 108-110.
- Maria Farida Indrati Soeprapto, *Ilmu Perundang Undangan: Dasar-dasar dan Pembentukannya*, (Yogyakarta: Kanisius, 1998), hlm. 64-65.
- Maria Farida Indrati Soeprapto, *op. tt.*, hlm. 93-95; A. Hamid S. Attamimi, *op. ct.*, hlm. 211.
- Mochtar Masoed, *Ekonomi dan Struktur Politik Orde Baru 1966-1971*, (Jakarta: LP3ES, hlm. 47-53.
- Moh. Yamin, *Naskah Persiapan UUD 1945* (Jakarta: Reproduksi Setneg. tt.). Jilid I, hlm. 26-28; Lihat pula dalam tulisan sejenis tentang Naskah Persiapan UUD 1945 jilid I, cet ke2 (Jakarta: Prapanca, 1971), him. 113 dan A. Hamid S. Attamimi, *op. cit.*, hlm. 82-83.
- Soehino, *Ilmu Negara*, (Yogyakarta: Liberty, 1980), hlm. 156-160; Bandingkan dengan Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, (Yogyakarta: Kanisius, 1982), hlm. 71

Teuku Mohammad Radhie, „Politik dan Pembaharuan Hukum”, dalam *Prisma* No. 6 tahun II (Jakarta: LP3ES, 1973), hlm. 4; M. Yahya Harahap, ‘Informasi Materi Kompilasi Hukum Islam: Memposisikan Abetraksi Hukum Islam” dalam *Mimbar Hukum*, No. 5 Tahun II, Jakarta: Al-Hikmah dan Ditbinbapera Islam, 1992), him. 17-2 1.