

ISLAMIC LAW IN A SECULAR STATE: A STUDY OF THE DISTINCTIVENESS OF ISLAMIC LAW IN INDONESIA

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Abstract : As a country of the largest Muslim population in the world, Indonesia is not an Islamic state. However, Indonesian government still accommodates the aspiration of Muslims to practice their belief and even to implement some aspect of Islamic law (shari'a). Political situation in Indonesia and the aspiration of Muslim society have given the opportunity for shari'a to be implemented formally. Therefore, it is essential for the ruler in a new democratic environment to accommodate Muslim aspiration to implement shari'a law, especially in national levels. This essay concludes that mutual influences between local traditions and Islam has formed a distinct characteristic of social structure of Muslim society in Indonesia. The fact of this characteristic has made some Indonesian Muslim intellectuals realized that the classical "imported" shari'a was not suitable to Indonesian context. Therefore, contextualizing and reinterpreting Islamic law for Indonesian Muslims is actually the best effort to implement shari'a in Indonesia amongst many demands of re-installment of shari'a law.

Abstrak: Sebagai negara berpenduduk Muslim terbesar di dunia, Indonesia bukanlah negara Islam. Namun, pemerintah Indonesia masih mengakomodasi aspirasi umat Islam untuk mempraktekkan keyakinan mereka dan bahkan untuk melaksanakan beberapa aspek hukum Islam (syariah). Situasi politik di Indonesia dan aspirasi masyarakat Muslim telah memberikan ruang bagi hukum Islam untuk diterapkan secara resmi. Oleh karena itu, adalah penting bagi penguasa dalam

lingkungan negara demokratis untuk mengakomodasi aspirasi Muslim tersebut untuk menerapkan hukum syariah, terutama di tingkat nasional. Tulisan ini menyimpulkan bahwa pengaruh timbal balik antara tradisi lokal dan Islam telah membentuk karakteristik yang berbeda dalam struktur sosial masyarakat Muslim di Indonesia. Fakta dari karakteristik ini telah membuat beberapa intelektual Muslim Indonesia menyadari bahwa hukum Islam klasik yang diambil dari negara lain tidak sesuai untuk konteks Indonesia. Oleh karena itu, kontekstualisasi dan penafsiran ulang hukum Islam (syariah) bagi umat Islam Indonesia sebenarnya merupakan upaya terbaik untuk menerapkan syariah di Indonesia, di antara banyaknya tuntutan banyak kalangan untuk pemberlakuan hukum syariah di Indonesia secara formal.

Kata Kunci: *Hukum Islam, Syariah, Penerapan Syari'ah, Indonesia, Negara Sekuler*

Introduction

Even though Indonesia is a country of the largest Muslim population in the world, it is not an Islamic state. Based on this fact, Indonesian state does not impose Islamic law to be implemented among Muslims society. However, Indonesian government still accommodates the aspiration of Muslims to practice their belief and even to implement some aspect of Islamic law (shari'a). The New Order regime, for example, at the beginning objected to accommodate Muslims' aspiration to implement Islamic law, but after some Muslim thinkers offered a moderate kind of Islamic law, the regime finally accepted the aspiration.

Historically, during the middle decades of the twentieth century, traditional shari'a which was practiced by Indonesian Muslims faced challenges from both Western and Islamic reformist thoughts. This condition made Indonesian Muslim scholars made an effort to contextualize Islamic law with national cultures and global modernization. This effort could be considered as a moderate way in formulating shari'a law among many voices to apply shari'a in Indonesian society. The Compilation of Islamic Law in Indonesia (KHI), for example, in which some shari'a rules have strong

influence from customary laws, can be regarded as a representation Islamic law in Indonesia.

However, new political development after the demise of the New Order regime has generated some Islamist politicians to take part in the political contestations, both nationally and locally. The euphoria of this political situation was then followed by the aspiration voiced by the Islamic political movement which is manifested in the decentralization process. Several strong Muslim enclaves such as Aceh and many other regions have inaugurated their Islamic political aspiration through the ratification of shari'a-based regional regulations.¹ It means the Islamist groups are still making efforts to implement a wider range of shari'a which covers not only private law but also "literal meaning" of Islamic criminal law, something considered as beyond Indonesian Muslims' need and originating beyond Indonesian culture.

Based on that political fact, it is essential for the ruler in a new democratic environment to accommodate Muslim aspiration to implement shari'a law, particularly in national levels. This essay will answer the question what kind of Islamic law is suitable for Indonesian Muslim society, and how they can expand the formal role of Islamic law into Indonesian legal system.

To answer those questions, this essay is divided into three parts. The first part will elaborate the Indonesian legal system and Islamic law, which depicts that Indonesia has pluralistic legal sources including Islamic law. The second part will explain contextualization of Islamic law into Indonesian society,

¹ Dewi Candraningrum, "Perda Shari'a and the Indonesian Women's Critical Perspectives", "Neue Willkuer gegen Frauen in Indonesien: Kontroversen um die Umsetzung der Regionale Scharia-Gesetze Perda Syariah (New Arbitrary against Women in Indonesia: Perda Shari'a and Women's Rights)". Bremen, Germany, retrieved from: <http://www.asienhaus.de/public/archiv/PaperPERDASHARIFA.pdf>; and Buehler, Michael (2008), "The Rise of Shari'a By-Laws in Indonesian Districts: An Indicator for Changing Patterns of Power Accumulation and Political Corruption", *South East Asia Research*, Vol. 16, Issue 2, pp. 255–285.

in which Indonesian Muslim intellectuals reinterpreted Islamic teachings, including shari'a (Islamic law). The third part will discuss adopting shari'a into state law in Indonesia, examining the Islamic law to be adopted in the state legal system within the frame of Indonesian legal development.

The Indonesian Legal System and Islamic Law

Indonesian legal system and some of its laws are in fact a legacy from the Dutch colonial era, which are still valid until recent days. The Dutch legacy of laws still prevails because of the existence of the Interim Provisions (article 1) of the Indonesian Constitution, which states that "all regulations and legislation that are in force shall continue to have effect until new regulations and legislation are enacted under this Constitution". The existence of this provision was intended to guarantee the assurance of the law and the continuation of society life by preventing legal emptiness, but at the same time it engendered the existence of various laws, as it happened in the colonial period, which hampered the formation of a national legal conception among Indonesian people. The existence of various legal conception in the society in turn will cause the lack of synchronization in the implementation and enforcement of law, both in government's bodies and in the courts. It also will result in emerging society that is used to one legal rule and is not used to another legal rule, although the rule is in fact constitutionally implemented. This situation leads to a tendency, especially in the matter of law obedience, that a particular legal rule which is actually applied to all Indonesian people is considered as a foreign law and regarded as not derived from Indonesian society.

The condition of Indonesian legal system at this time has been basically experiencing a little change if it is compared to that of the Dutch colonial law. The provisions and the legal rules that were enacted since the Indonesian proclamation of independence are in fact only correction and addition of previous laws. The correction and the addition basically have not reformed fundamentally the Dutch legacy. Thus, the current Indonesian legal system

has not reached the ideal which is in accordance with the conception of national legal system as aspired in the Constitution.

Actually, efforts to reform Indonesian legal system have been made since Indonesia's independence, including an effort to adopt Islamic law. Just like other countries that got liberty from colonial occupation, Indonesia's independence became a starting point to make an effort to form a national law as a replacement of the colonial law. The proclamation of independence was basically a pillar and a dividing line between the colonial legal structure and the national one. However, as it was mentioned above, most laws applied in Indonesia nowadays are basically legacy of the Dutch colonial regime, particularly criminal and civil laws. Therefore, it could be said that Indonesian society is still struggling to form a national legal system,² including efforts to adopt Islamic law that was begun just prior to Indonesia's independence in 1945.

Most Indonesian Muslims believe that carrying out Islamic law is an obligation as a part of their belief, which leads to have a view that the implementation of the Islamic law in Indonesia is needed, and their view is not how Islamic law could be possibly made as a main material for the formation of national law. If we observe Indonesian Muslim society in recent years, especially its leading figures who were involved in the debate on a discourse of Islamic law implementation in Indonesia, they are divided into at least two groups. A group that stresses on the formal-textual approach and the other group that stresses on the cultural-substantial approach. The first group with its textual interpretation of Islam believes that Islamic law should be implemented to all Indonesian Muslims formally by the state. Therefore, for this group, the process of political life is as a means to reach this goal, i.e. implementing Islamic law normatively and formally through Indonesian legal system.

² Munawwir Sjadzali, *Ijtihad Kemanusiaan* (Jakarta, Paramadina, 1997), p. xxii.

The second group, which is the group using the cultural-substantial approach, believes that what is important in the application of Islamic law is not the formalism of the Islamic law, but the absorption of the Islamic values into Indonesian society is the more important way. It means that the universal values of Islamic teaching, such as justice, honesty, freedom, the equality in front of law, tolerance, should be implemented in each behavior of society life. Because the characteristic of this approach is the absorption of the substance of Islamic values, this process uses cultural, not the structural method. Therefore, this group does not need legislations or governmental regulations in order to implement Islamic values in society.

It is interesting to note that since Indonesia's independence in 1945, when the founding fathers debated on the foundation of Indonesian state whether it was Islamic state or secular state, the leading figures of Indonesian Muslim politicians since the beginning was already polarized becoming two groups; the secularist group viewing that religion, in this case Islam, should have not been formalized through the constitution, and the other was the Islamist group that wanted the opposite.³ The debate among the leading Muslim figures in fact had happened long before independence, particularly between Soekarno and Muhammad Natsir. According to Soekarno, democracy might not exist if state matters were combined with religious matters, while Natsir believed that the realization of the Islamic teaching would not be perfect without state's involvement as a means of its implementation.⁴

Afterwards, in the beginning of 1970's, Nurcholish Madjid showed the view that in Islam between religion and state was two different matters although they were not separated. According to him, religion and state were not separated because each Muslim must behave always in order to get

³ Bahtiar Effendy, *Islam and the State in Indonesia* (Singapore: ISEAS, 2003), p. 30.

⁴ Munawwir Sjadzali, *Islam dan Tata Negara: Ajaran, Sejarah dan Pemikiran*, (Jakarta: UI Press, 1990), p. 191-192, also Bahtiar Effendy, *Islam and the State in Indonesia*, (Singapore: ISEAS, 2003), p. 20.

God's willing, including in the state affairs. However, according to Madjid, the religious matter and the worldly affairs, including state, were different, because the truth of the former was absolute while that of the latter was relative. With this reason he refused the formalization of Islamic law in the constitution and in the country's legislations. With his famous appeal that was "Islam yes, Islamic Party no", Nurcholish Madjid's thought often attracted responses of other Muslim intellectuals, both that was in favor and against up to recent days. Leading figures that were against and denied his thought, among others, were H.M. Rasyidi, Endang Saefuddin Anshari, and Daud Rasyid.⁵

In 2000s, issues of the re-implementation Islamic law through the constitution emerged to surface once again since the annual session of the People's Consultative Assembly (MPR) in 2001 which placed the agenda of the 1945 Constitution amendment. These issues were brought forward Islamist parties and organizations. However, this proposal was refused because the majority of the parties in the parliament did not agree in the formalization of Islamic law, and this decision was supported by two biggest Islamic organizations Nahdatul Ulama (NU), Muhammadiyah.⁶

Apart from the difference of the two groups' opinion, in reality, Islamic law in Indonesian legal system is already acknowledged as a legal source to form Indonesian national law, together with other legal sources such as Western laws (especially the Dutch) and customary laws. Therefore,

⁵ Criticism and refusal of Nurcholish Madjid's thoughts were also documented in some books, such as H.M. Rasyidi, *Sekularisme dalam Persoalan Lagi: Suatu Koreksi atas Tulisan Drs. Nurcholish Madjid* (Jakarta: DDII, 1973), Endang Saefuddin Anshari, *Kritik atas Faham dan Gerakan Pembaruan Drs. Nurcholish Madjid* (Bandung: Bulan Sabit, 1973), Daud Rasyid, *Pembaruan Islam dan Orientalisme dalam Sorotan* (Jakarta: Usamah Press, 1993). See Abdul Aziz Thaba, *Islam dan Negara dalam Politik Orde Baru* (Jakarta: Gema Insani Press, 1996), p. 342-345.

⁶ Ridwan Al-Makassary, "The Dilemma of the application of the Shari'ah, Secularism and Human rights in Modern Indonesia", retrieved from: http://www.interseksi.org/publications/essays/articles/shari'ah_dilemma.html

Indonesian Muslims' struggle is actually how to prepare the formulation of Islamic law in order to be made as one of the sources to form national legal rules. As a consequence, the need to formulate Islamic law which is in accordance with the Indonesian context becomes a certainty.

Contextualization of Islamic Law into Indonesian Society

Islamic thought is in fact very complex particularly in philosophical, dogmatic, theoretical, and conceptual aspects, including in the context of Indonesia which possesses a number of distinctive characteristics due to its different historical, social, cultural and political realities.⁷ In order to understand the characteristic of Islam in Indonesia, one should know the facts of social structure of Indonesian society, in which Muslim society experiences an encounter between their religious tenets and local customs. Indonesian society is remarkably diverse and heterogeneous with many different ethnic groups stratified socio-economic classes, wide-range political orientations, and different religious beliefs. With regard to the religious life, most of the major world religions are represented in Indonesia, besides local religions and animistic beliefs. Among these faiths, Islam constitutes about 87 per cent of the population, making it the largest religious group in the country.⁸

Even though Islam is embraced by the majority of Indonesian population, their beliefs and practices, and also in term of their understanding of political Islam, are not monolithic, because the ways that Muslims in various communities seek to actualize their beliefs in their daily lives are determined more by local conditions. Islam has played an important role in Indonesia,

⁷ Azyumardi Azra, "Islamic Thought: Theory, Concepts and Doctrines in the Context of Southeast Asian Islam", in K.S. Nathan & Mohammad Hashim Kamali (Eds.) *Islam in Southeast Asia: Political Social and Strategic Challenges for the 21st Century* (Singapore: ISEAS, 2005), p. 3.

⁸ Benyamin Fleming Intan, *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis* (New York: Peter Lang, 2006), p. 31.

both in national and local level, and it has become a key factor in ethno-nationalism.⁹ This can happen because there is reconciliation between local tradition and Islamic teaching wherein the two exerted mutual influences on one another.

Therefore, it can be said that the mutual influences between local traditions and Islam has formed a distinct characteristic of social structure of Muslim society in Indonesia. The fact of this characteristic has made some Indonesian Muslim intellectuals realized that the classical “imported” shari’a was not suitable to Indonesian context.

According to Hasbi Ash-Shiddieqy, in order *fiqh* to be used and practiced by Indonesian Muslim society, *fiqh* not only should be able to solve problems which emerged in the community justly, but also should be easy to be understood and it was not felt alien and foreign for them, otherwise, according to Hasbi, the Muslim people would leave it and look for the other source of law.¹⁰ Hasbi argued that if the Arabian tradition could become the source of *fiqh* which was in effect for Arabian people, then the Indonesian tradition could also become the source of *fiqh* which was applied to Indonesian Muslims. Putting into effect Arabian, Indian, or any other cultures for Indonesian Muslims, according to him, was not only incompatible with the principle of equality which was derived from Islamic teaching, but also *fiqh* would be felt foreign to society, which could cause double standard attitudes among Muslim society if there is a difference between *fiqh* and the tradition.¹¹

⁹ Hasnil Basri Siregar, “Islamic Law in a National Legal System: A Study on the Implementation of Shari’ah in Aceh Indonesia”, *Asian Journal of Comparative Law*, vol. 3, 2008, p. 1.

¹⁰ Nourouzzaman Ash-Shiddieqy, "Prof. T.M. Hasbi ash-Shiddieqy", in Mohammad Damami et. al. (Ed.) *Lima Tokoh Pengembangan LAIN Sunan Kalijaga* (Yogyakarta: Pusat Penelitian IAIN Sunan Kalijaga, 1998), p. 156.

¹¹ *Ibid.*, p. 157.

Actually, in practice Indonesian Muslims had a tendency to accommodate local traditions and even were more syncretistic by amalgamating their religious practices with local cultures, wherein this practice was in fact not a big issue at all among Indonesian Muslim scholars (*ulama*), to whom most of Indonesian common people incline their religious views and beliefs.

Muslim intellectuals have long influenced the development of Islam in Indonesia. Azra, for example, shows in his study that Indonesian *ulama* have had relations with the Middle Eastern counterparts since in the beginning of seventeenth century which linked Indonesian Muslims with centers of Islamic thought in the Middle East.¹² The Middle Eastern orientation of Indonesian Muslim intellectuals was one of long standing, because most of the Indonesian *ulama* who played a role in the development of Islam in the country graduated from Middle Eastern education and training.¹³ Consequently, thinking tendencies among Indonesian Muslims followed those established in the Middle East, where Islam has traditionally been studied from a normative point of view.¹⁴

It was in the second half of the 20th century that those tendencies began to change when some Indonesian Muslims began to study Islam in Western universities, by which the new generation of Muslim intellectuals would be able to reform the Middle Eastern perspective of Islamic studies that in turn made a significant impact on the tradition of Islamic studies as a whole in Indonesia.¹⁵ In 1970s there were some leading figures in Islamic thought rolling issues regarding a need to reform Indonesian Muslims' perception on Islamic teaching. Nurcholish Madjid, for example, by adopting the

¹² Azyumardi Azra, *Jaringan Ulama Timur Tengah dan Kepulauan Nusantara Abad XVII dan XVIII* (Bandung: Mizan, 1995).p. 190.

¹³ Fu'ad Jabali & Jamhari, "Introduction", in Fu'ad Jabali & Jamhari (Eds.) *Islam in Indonesia: Islamic Studies and Social Transformation* (Montreal, Canada: Indonesia-Canada Islamic Higher Education Project, 2002), p. xii.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p. xiii.

ethos and spirit of modernism, made statements about the need to rethink petrified modes of Indonesian Muslims' thought and patterns of action in the name of Islam with his comment on secularization as the "de-sacralization" of concepts and institutions that had been turned into sacred objects by the Muslim community, which was widely misread as a call for secularism.¹⁶ Actually, his statements could be read as a devastating critique of the existing Muslim parties and organizations, whose obsessions were creating the ideal of an Indonesian Islamic state with general staleness of their religious ideas.¹⁷

Since 1970s, progressive Muslim intellectuals led by Nurcholish Madjid have begun to make their efforts in reinterpreting Islam take into effect by emphasizing on redirecting the Muslim community's concern from political interests towards the substance of Islamic teachings. Other Muslim thinkers, such as Harun Nasution, Abdurrahman Wahid and Munawwir Sjadzali raised similar Islamic religious issues by focusing on a fact that Qur'an does not contain all matters which will provide every rule in detail. The position of this notion emphasizes the importance of the concept of *ijtihad* as a way to re-interpret or to re-actualize Islamic doctrines in order to be in line with intellectual and moral development of modern society. In this case, Muslim society must take into account the importance of local, contextual and temporal particularities.¹⁸

As a result of the effort of Muslim intellectuals of the 1970s in reinterpreting Islamic teaching and restoring Muslims' perception on Islam, their progressive thought of Islam was more widely accepted not only by Muslim society but, more importantly, also by the ruling regime which began to alter its policies regarding Islam and Muslim society after such progressive thought of Islam was introduced. Indonesian Muslims politically became

¹⁶ Martin van Bruinessen, "Nurcholish Madjid: Indonesian Muslim Intellectual", *ISIM Review*, No. 17, 2006.

¹⁷ *Ibid.*

¹⁸ Bahtiar Effendy, *Islam and the State in Indonesia* (Singapore: ISEAS, 2003), p. 75.

more moderate and more rational, because they were no longer obsessed with Islamic ideology which previously predominated in their minds.

Moreover, the New Order regime became more accommodative to Muslims' aspirations as far as social and cultural interests were concerned.¹⁹ It can be seen from the wide recruitments of Islamic scholars and activists to the state's executive and legislative bodies. Also, the parliament, along with the government, passed some laws related to Muslims' aspirations such as the enactment of the new Islamic Judicature Act in 1989, the establishment of Islamic Banking (Muamalat Bank) in 1991, and the creation of the Compilation of Islamic Law in 1991 as one of the material laws for and is used as the basis of the decisions made by Indonesia's Islamic courts.

Those intellectuals have made a radical shift not only from the old Islamic political paradigm, but also from doctrinal approach to a context-based of Islamic thought.

Adopting Shari'a into State Law in Indonesia

Many Indonesian leading figures basically focused on the idea of the need of *fiqh* that is typical and in accordance with the context of the Indonesian community, which may be able to be put into effect formally by means of legislations. One of them is Hasbi, as already mentioned above, who mentioned that the existence of *fiqh* that was based on the Indonesian tradition was a certainty, because the classical *fiqh* written by traditional Muslim scholars and applied to Indonesian Muslims were based on the tradition (*urf*) of Arabian society which was not in accordance with Indonesian culture. To realize this idea, the *fiqh* must be in accordance with Indonesian culture and it must also fit to Indonesian positive law in order to be integrated in the national legal framework. Therefore, it needs to study Islamic law and national law comparatively to get a mutual aim from those two types of law. The mutual aim of those laws can be put together to form a national law which can be applied to all citizens regardless their religion.

¹⁹ *Ibid.*, p. 151.

According to Hasbi, the interpretation of Islamic law in Indonesian context is actually a continual process of understanding Islam (*tafaqqub fi al-din*); therefore, it is a significant effort to make shari'a law useful for humankind, both individual and community, because, for Muslims, shari'a is considered containing universal values, which is actually legal ideas, whereas *fiqh* (the human understanding on shari'a) is always related to a certain community.²⁰ Regarding the interpretation of shari'a and *fiqh* methodologically, Hasbi said that the universal values of shari'a are regarded as "abstract norms" or legal ideas. It is from this norm that the principles of Islamic law are determined and defined as the "norm in-between" (or "tussen norm" in the Dutch, as Hasbi mentioned it), which becomes a bridge between the values of shari'a and regulations (the applied Islamic rules) in order to be realized in accordance with a certain social condition and social culture. The applicable Islamic law, which is applied to Muslim community as a result of the application of shari'a principles, is called by Hasbi as "concrete norms". With this interpretation of the hierarchy of shari'a norms, according to Hasbi, Islamic law is expected to be able to be applied in Indonesia, and in turn it can give a contribution for the development of Indonesian national law.²¹

Furthermore, Hasbi argues that the elasticity of shari'a takes place in its aims which are actually merely to uphold justice, promote equality and bring about the well-being of the public. These aims, according to Hasbi, would suit everyone regardless of their religion, race or nationality. It is in this sense that shari'a is absolute and universally applicable, because it was revealed by God for the sake of all human beings.²² By this argument, Hasbi actually emphasized that if the aims of shari'a can be advanced through legislation, whether it is called shari'a or something else, shari'a will automatically take

²⁰ Hasbi Ash-Shiddieqy, *Dinamika dan Elastisitas Hukum Islam* (Jakarta: Tintamas, 1982), p. 40.

²¹ *Ibid.*, p. 40-41.

²² *Ibid.*

effect. Any law or regulation as long as it promotes justice, upholds equality, and brings about well-being and prosperity is congruous with shari'a purposes and deserves full support from all Muslims.

Therefore, efforts to contextualize Islamic law must be accompanied by formulation of principles of Islamic legal thinking which is in accordance with the socio-cultural life of Indonesian society. In the context of Indonesia which is still developing its national law, the efforts adopting shari'a should take into consideration the process of this national law development. In this matter, according to Hazairin, Islamic law (the norms of shari'a) can be one of sources for developing Indonesian law through inclusion of Islamic legal principles into legislations and codification by means of a democratic process.²³ However, by the Islamic legal principles Hazairin means here is that the reinterpretation of Islamic law should be in accordance to Indonesian cultural conditions and not to some other foreign and historically distant situation, in order for Islamic law to become realized as the actual living law of Indonesian society.²⁴

Indonesia is not an Islamic state and it does not recognize a single religion as an official religion of the state. However, the Indonesian nation is governed based on the *Pancasila*,²⁵ whose first principle is belief in One Almighty God. As a consequence of this principle, according to Hazairin, Indonesian government should not allow any law to take place or exist which is opposed to Islamic teachings for Muslims, Christian teachings

²³ Hazairin, *Hukum Islam dan Masyarakat* (Jakarta: Bulan Bintang, 1963), p. 17.

²⁴ R. Michael Feener, "Muslim Legal Thought in Modern Indonesia: Introduction and Overview", in R. Michael Feener & Mark E. Cammack (Eds.) *Islamic Law in Contemporary Indonesia* (Massachusetts: Harvard University Press, 2007), p. 19.

²⁵ *Pancasila* is five principles as it is formulated in the Preamble of the 1945 Constitution, which is slightly different from that in the Jakarta Charter. *Pancasila* consists of the principle of One Lordship, a just and civilized humanity, the unity of Indonesia, peoplehood which is guarded by the spirit of wisdom in deliberation/representation, and social justice.

for Christians, Hindu-Balinese teachings for Hindu-Balinese, nor anything which goes against the Buddhist religious morals for Buddhists.²⁶ Therefore, Islamic law can become a source for the formation of national law which will go hand-in-hand with other laws which grow and develop in the Republic of Indonesia.²⁷ Hazairin's argument which was always based on, and emphasized, the principle of the *Pancasila* is actually in line with the principles of shari'a which is more based on the moral precepts of social compromise than on the coercive side of legal prescriptions.

Even though both Hasbi and Hazairin concerned particularly to the implementation of religious law in Indonesian modern nation-state, in fact their ideas are in line with other Muslim scholars who concern more to the state and religion relationship than to legal matters, such as Nurcholish Madjid and Abdurrahman Wahid. Their ideas have several things in common especially related to the realization of their ideas which basically must be based on the foundational constitutional and institutional structures of the state. Whatever their ultimate impact on state legal reformulation, the models of their thoughts compromise a rich and varied heritage, which would include the encouragement of *ijtihad* and the consideration of local conditions in the way that shari'a is interpreted and implemented.²⁸

Conclusion

Islamic law is generally accepted by Indonesian Muslims, and even the Indonesian Constitutional law acknowledges Islamic law as one of the sources of Indonesian national law, in which both Islamic law and customary law are regarded as coexisting legal orders. In fact, mutual influences between local traditions and Islam has formed a distinct characteristic of social structure

²⁶ Mohammad Daud Ali, "The Position of Islamic Law in the Indonesian Legal System", in Taufik Abdullah & Sharon Siddique (Eds.), *Islam and Society in Southeast Asia* (Singapore: ISEAS, 1986), pp. 201-2.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 26.

of Muslim society in Indonesia. The fact of this characteristic has made some Indonesian Muslim intellectuals realized that the classical “imported” shari’a was not suitable to Indonesian context. Therefore, contextualizing and reinterpreting Islamic law for Indonesian Muslims is actually the best effort to implement shari’a in Indonesia amongst many demands of re-installment of shari’a law after the reform era. |

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