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Islamic Law as the Authoritative Source in State Administration of Indonesia

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Abstract

Many academicians regret the removal of seven words in the Jakarta Charter and consider this a political defeat for Muslims. If the words had not been removed, Islamic law would be simple in its implementation in Indonesia. There was a new hope when the Presidential Decree of July 5th, 1959, stated to return to the 1945 Constitution. The Presidential Decree emphasized that the Jakarta Charter was a series of units in the Constitution. In other words, Islamic laws in the state administration system in Indonesia could be the authoritative source. This means that Islamic law has a chance to contribute to the Indonesian legal system. This qualitative research used a normative approach in which information was gained from several reliable sources, such as books and journals, to explore and figure out any perspectives about the status of Islamic law as the authoritative source in the state administration of Indonesia. This research showed that Islamic law as the authoritative source could contribute to the legal order applied in Indonesia. As a political product, the law relies on the political situation; nevertheless, Muslims cannot maximize their political roles given the hindrances from external and internal factors. Hence, there is a need to build awareness of Muslims, particularly those becoming law-makers, to be capable of introducing Islamic laws to the public through the objectification of Islamic laws. Substantially, Islamic law is superior in giving justice, benefits, and legal certainty.

Keywords*:* Jakarta Charter, Authoritative Source, Objectification, law-maker

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Abstrak

Banyak akademisi yang menyayangkan penghapusan tujuh kata dalam Piagam Jakarta dan menganggap ini sebagai kekalahan politik bagi umat Islam. Jika kata-kata itu tidak dihapus, hukum Islam akan menjadi sederhana dalam pelaksanaannya di Indonesia. Ada harapan baru ketika Dekrit Presiden 5 Juli 1959 menyatakan untuk kembali ke UUD 1945. Dekrit Presiden tersebut menegaskan bahwa Piagam Jakarta merupakan rangkaian kesatuan dalam UUD. Dengan kata lain, hukum Islam dalam sistem ketatanegaraan di Indonesia dapat menjadi sumber otoritatif. Ini berarti bahwa hukum Islam memiliki peluang untuk berkontribusi pada sistem hukum Indonesia. Penelitian kualitatif ini menggunakan pendekatan normatif di mana informasi diperoleh dari sejumlah sumber yang dapat dipercaya seperti buku-buku dan jurnal untuk mengeksplorasi dan mencari tahu perspektif apa pun tentang status hukum Islam sebagai sumber otoritatif dalam administrasi negara Indonesia. Penelitian ini menunjukkan bahwa hukum Islam sebagai sumber otoritatif dimungkinkan untuk memberikan kontribusi terhadap tatanan hukum yang berlaku di Indonesia. Sebagai produk politik, hukum bergantung pada situasi politik; namun demikian, umat Islam tidak dapat memaksimalkan peran politik mereka mengingat adanya hambatan baik dari faktor eksternal maupun internal. Oleh karena itu, perlu dibangun kesadaran umat Islam khususnya yang menjadi pembuat hukum untuk mampu memperkenalkan hukum Islam kepada masyarakat melalui objektifikasi hukum Islam. Secara substansial, hukum Islam lebih unggul dalam memberikan keadilan, kemaslahatan dan kepastian hukum.

Kata Kunci*:* *Piagam Jakarta, Sumber Otoritatif, Objektifikasi, pembuat undang-undang*

A. INTRODUCTION

Islamic law refers to the living law practiced in Indonesian people's life as it is an integral part of Islam that cannot be separated. Indonesia is not an Islamic country but religion is an important part of the life of the nation and state. In a country with the ideology of Pancasila, Islamic law has a strategic position and positive contribution to Indonesia's legal politics map. The first principle of *Belief in One and Only God* is a teaching that is in line with *tauhid* as the main principle of Islamic teachings. Islamic law has provided a solid ideal basis to implement the provisions of Islamic law in a Pancasila-based legal state.

Some Islamic laws are *diyani*, (*mulzimun minafsihi*) in nature since their implementation relies on the obedience of the adherents as an individual in which the cores of religion include being submissive and obedient to the rules brought by religion.(RIFYAL KA'BAH, 2016). However, some Islamic laws have the dimension of *Qadhaí* (Mulzimun bighairihi), which requires other legal institutions to enforce them. Islamic laws rely not only on the submission and obedience of its adherents to religious rules but also require legal instruments to implement them, such as laws and regulations, police, prosecutors, and judges. In Islam, it is believed that punishment has two nuances: worldly and hereafter. The court determines worldly punishment for violating religious

law, while Allah determines the hereafter (Musyahid of the Indonesian Ulama Council of South Sulawesi, 2019).

The position of Islamic law in the national legal system is one of the primary sources of material from three authoritative sources, i.e., Islamic laws, customary laws, and western law/international laws. Islamic law has a great opportunity to enter more as the basic materials required to maintain the national law. Islamic law can be positioned in national law in two ways: (1) materially, i.e., Islamic law must be understood as universal teaching values that are dynamic and applicable over time and circumstances, rather than as old-fashioned, static, and closed teaching; and (2) formally, Muslims who are the majority in quantity can dominate government institutions, control political acts, and lead to political will (Sopyan, 2012).

To obtain a wider space in the National Law, Islamic law must show its competitive superiority over other legal systems. One of the ways is by conducting objectification, in which the Islamic values must be translated into objective categories; by so doing, the Islamic law can be accepted by all related parties. In other words, the action is seen as objective as long as the non-Islam sees it as a natural deed – not a religious deed – though Muslims still see them as a worship act (Kuntowijoyo, 1997). Indeed, it is challenging for Muslims – particularly college students as reviewers of Islamic law and state administration- to find a good pattern in its realization.

B. DISCUSSIONS

1. Islamic Law in the Era of Islamic Kingdoms and Dutch Colonialism

Islamic law in the Archipelago existed before the arrival of European invaders. It was applied in several kingdoms such as Samudra (in 13AD) (Gunawan, 2018); Demak (from 1500 to 1518) (Susilo & Wulansari, History Education, STKIP PGRI Lubuklinggau, 2019); Cirebon (in 1445), Banten (in 1526), Mataram (in 16AD) (Zamzami et al., 2018) and some kingdoms in the eastern part of Archipelago, such as Tidore Kingdom (in 1081) (Rusdiyanto, 2018) and Gowa-Tallo (Makassar, in 1320) (Ariesman & Iskandar, 2020) Those Islamic kingdoms have had the court held in a simple way conducted in the porch of a mosque or the royal pavilion led by a judge who was chosen from an excellent trusted and respected Ulama. Sometimes, the court was led by the king, who acted as a judge (Fadhilah, 2020).

The expansion of Europeans to the East, especially the continents of Asia, Africa, and America, had impacted the peace of Islamic kingdoms. This spirit could not be separated from the Renaissance in Europe and the discovery of new roads to the colonized regions, for instance, Cristopher Columbus discovering the Americas in 1492 (Scientific evidence revealed that *Colombus was not the one discovering America but Muslim | Online Republika*, n.d.) or Vasco Da Gama discovered the Cape of Good Hope in 1478 (*Ibnu Majid, Navigator Vasco Da Gama - Ramadan Tempo. Co*, n.d.) Many European countries were coming to the Archipelago, such as Spain; Portugal, and England, but the Dutch had the longest time in its colonization.

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The arrival of the Dutch to Indonesia can be divided into two phases. The first phase refers to the period of total acceptance of Islamic law. This took place during the reign of the VOC (*Vereenigde Oostindinche Compagnie*/East India Company Association) (Buzama, 2012). The Dutch attempted to monopolize the spice trade, particularly cloves, pepper, nutmeg, and cinnamon, which were the very high-priced commodities in Europe then, even exceeding the price of gold. Initially, the Dutch had no intention of colonizing; however, later, they saw a profitable opportunity if it continued to be a colonial territory. Hence, the Dutch began to explore the area of legal politics. In the initial phase, due toVan den Berg, a legal anthropologist, whose thoughts are known as the *Receptio in Complexu* theory, the Dutch implemented some of their legal systems and accommodated Islamic Law (Pebrianto et al., 2022). Van den Berg was consigned to research the law applied in the colonized areas to observe the laws applied in society. The results of his observation were then used as the conquest strategy of the invaders over the area. The *Receptio in Complexu* theory stated that the applied law in the Archipelago was Islamic law and customary law, which was also the result of absorption from Islamic law. Ismail Sunny called this the period of total acceptance of Islamic law (Alifia, 2021). Islamic law was applied by Muslims as the binding law, while the family law of VOC was acknowledged and implemented in the form of the regulation of *Resolutie der Indische Regeering* dated May 25th, 1760, compiled by Friejer. This compilation was later called the *Compendium Priejer* (Sahid, 2016). In this phase, the Dutch started expanding to the legal realm. On June 24th, 1620, VOC established the *College van Scheepenen*, a Court under the leadership of a *Baljuw* (justice officer) who also acted as the Head of the Police Force (Takeshi, 2015). College van Scheepenen then altered into a larger court, named *Raad van Justice* as the first and last instance court for employees and soldiers of VOC.

The second phase referred to the phase of Acceptance of Islamic Law by Customary Law. This phase occurred during the Dutch colonial period that started and took over VOC. After VOC experienced bankruptcy, the authority was then replaced by the Dutch kingdom. At this time, Islamic law was degraded from being accepted to be being removed. The Dutch government took a decisive action to discredit Islamic law, one of which was through the discrimination politics that differentiated the natives and non-natives. Here, the Moslems were separated from their Islamic law. For two reasons, the Dutch pressured Islam; first, it was about revenge. Many European scientists studied in Spain and later became European enlighteners (Nugroho, et al., 2021).

The Spanish Islamic empire controlled European, where Islam occupied Spain during the Caliphate of al-Walid (705-715 AD) and ruled in Europe for seven centuries with Cordova as the capital (Qurthubi) (Napitupulu, 2019). The development of Islam in Spain then became a bridge of Islamic civilization to Europe and impacted the Renaissance Movement (Nugroho et al., 2021). The Crusades (Hillenbrand, 1999) and the expansion of the Ottoman Empire in Europe (Rulianto & Dokopati, 2021) were considered the dark history of a European nation that must be avenged. Therefore, Islam became the common enemy of European Christianity that tried to Christianize the African, Asian, and American peoples. There were three goals for Europeans to colonize,

then abbreviated as 3G (Gold, Glory and Gospel). (Bannon & Wright, 1971) The second was economic and political motives, namely to dominate and to take the wealth for the glory of their country. Europeans competed to expand to Asia, Africa, and America, in this case.

During the first phase of Dutch rule, Islamic law was applied still with the legal basis of the Regeeringregiement (RR) in 1855, where Article 75 it was stated: "*By Indonesian judges, religious laws (Goolsdienstige wetten) should be enacted"*. However, under the Dutch colonial rules, Islamic law was marginalized in the second phase. Snouck Hurgronje, the adviser of the Dutch kingdom in Indonesia and an expert on Islam, advised weakening Islam and Islamic law. Snouck argued that the way to weaken Islam was by separating Islam from its law. The theory of Snouck is known as the *Receptie theory*, stating that Islamic law was only applied to Muslims if the customary law accepted that law. Ismail Sunny called this the period of Islamic Law acceptance by Customary Law. The theory of Souck became the basis for the change of *Regeeringregiement* (RR) into *Indische Staatsregeling* (IS) in which Islamic law was removed from the legal system of Dutch East Indies through the *1992 Staatblaag*; 212, and Article 134 paragraph (2) 15 of 1929 stating: "*In the event of a civil case between fellow Muslims, it shall be resolved by the judges of the Islamic Religion if their customary judge wishes and so far it is not determined otherwise by an ordinance*."

Further implementation of the regulation, the Dutch East Indies government transferred the authority to regulate inheritance from the Religious Courts to the District Court in which the inheritance had been the authority of the Religious Courts since 1882 on the basis that Islamic inheritance law had not been entirely accepted by the customary law (Sunny, 1987). The Dutch intended to keep Muslims away from Islamic law; by so doing, Islam could be far from power. Indeed, this policy disturbed the Muslims, that then started to criticize the Dutch East Indies Government through books and newspapers (Suminto, 1985)

2. Islamic Laws After Indonesia's Independence

Although there was one period missing, i.e., the Japanese colonial era in the period of 1942-1945, there were not many Japanese policies concerning Islamic Law, except the changes of the institution names Japanese language, such as the religious court changed into *Soo-rioo Hooin*, and the High Islamic Court into *Kaikioo katoo hooin*. At least Japan had ever abolished the Religious Courts and replaced them with the common court, where religious experts were found to be consulted (Martius, 2016). There was no realization of this policy given the defeat of Japan by the Allies, and Indonesia then proclaimed its independence.

Japan also contributed to preparing for Indonesian independence by establishing BPUPKI (the Investigating Committee for Preparatory Work for Independence of Indonesia). In the meeting of BPUPKI, a great debate occurred between nationalists and Islamic groups. Establishing an Islamic state and making Islam the basis of the state or implementing Islamic law became exciting discourses. From 68 people as BPUPKI

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members, 15 were persistent in fighting for an Islamic state, while 45 chose the basis of a national state. The remaining eight people were the Japanese acting as the committee (Saifuddin, 1981). BPUPKI was chaired by Dr. Rajiman Wedyoingkrat, an adherent of Kejawen, a nationalist figure affiliated with the Budi Utomo Movement. Meanwhile, the members from Islamic groups included H. Agus Salim, KH. Wahid Hasyim, Abikusno, M. Natsir, M. Roem, Sukiman, Kasman Singadimedjo, and A. Kahar Muzakkir (Noer, 1986). The Islamic group consisted of two groups; the first group was the group that strongly encouraged Muslims to make Islam the basis of the state. This group could not be separated from the determination of the thoughts that developed at that time, i.e., Pan-Islamism with its jargon "*ïnnal Islaam din wa dawlah*" (*indeed, Islam is a religion and state*) or the concept of al-Gazali *Addin wa shulthan taw-amaan (implementing religious orders and gaining political power are twin*) (Effendy, 2005). The second group was less ambitious in establishing an Islamic state but was more interested if the state guaranteed implementation of Islamic law (Thaba, 1995).

The BPUPKI committee established a small committee called the PPKI (Preparatory Committee for Indonesian Independence) led by Soekarno. Other members included Drs. Mohammad Hatta (as Deputy Chairman), K.H.A. Wahid Hasyim, Kyai Haji Kahar Muzakkir, Mr. A A. Maramis, Abikusno Tjokrosujoso (as an Islamic group), Mr. Achmad Soebardjo (as a national group), H. Agus Salim and Mr. Muhammad. Yamin and this small committee were also known as the Committee of Nine. One of the results of the Committee of Nine was the existence of a *gentlemen's agreement* on June 22nd, 1945, with the emergence of seven words in the First Precepts of Pancasila, i.e., *Belief in God with the Obligation to Implement Islamic Sharia for its adherents*. The significance of the seven words from the constitutional law perspective is that the application of Islamic law as the source of formal law (laws and regulations) in various aspects would be carried out without difficulty (MD, 2010).

After the Proclamation of the Republic of Indonesia, on August 18th, 1945, at the PPKI Session, seven words in the Jakarta Charter version of the First Precepts of Pancasila were missing. It was not only those seven words; the term *Muqoddimah* in the 1945 Constitution was then replaced with *Preamble*. According to Saifuddin Ansari, it was M. Hatta who urged that the seven words be removed (Saifuddin, 1981) at the suggestion of A.A. Maramis, who had consulted Teuku Muhammad Hassan, Kasman Singadimedjo, and Ki Bagus Hadikusumo. The national disintegration became the basis of M. Hatta's thought, especially when a Kaigun officer came to Hatta and informed that the representatives of the Protestant and Catholic religions in areas controlled by the Japanese Navy expressed their objection to the opening sentence of the Constitution as formulated by the Committee of Nine which contained these seven words and they threatened to separate themselves from Indonesia (Putri, 2021) The formulation of the first precept is the evidence of the big-heartedness of Islamic figures to achieve an independent Indonesia (Hazairin, 1973) In contrast, according to Fachri Ali, Bachtiar Effendi, and Ahmad Syafii Maárif, this attitude is seen as a defeat for Islamic Politics (Thaba, 1995).

With the acceptance of the deletion of the seven words in the first precept and changed into *God Almighty*, it can be understood that Indonesia, as a Pancasila-based country, is neither a *religious nation-state* adhering to one particular religion nor a secular state. Indonesia is a nation-state that is religious and uses religious teachings as a moral basis and a source of material law in the administration of the state and the lives of its people. In the legal aspect, Mahfud MD explained that Indonesia outlines four guidelines for national law: (1) the law in Indonesia must guarantee the integration of the nation; (2) the law must be created in a democratic and non-monocratic manner based upon the wisdom; (3) the law must encourage the creation of social justice characterized with the efforts to prevent any differences between the strong and the weak; and (4) there should be no public law based upon certain religious teachings (MD, 2010) In such conception, Islamic law can become a source of national law along with other sources of law that have been so long existing as the legal awareness of the Indonesian people.

After the proclamation of Indonesia's independence and the enactment of the 1945 Constitution, the debate about the basis of the state among political figures continued (Berutu, 2016). The results of the first general election in 1955 became a new chapter for Indonesia in terms of democracy, also known as the most massive general election involving many political parties. The 1955 general election is claimed to be the most honest election in the history of Indonesian democracy. The first election was a duplication of the western-style liberal democratic system organized by three cabinets: the Wilopo Cabinet, Ali Sastroamidjojo, and Burhanuddin Harahap. It was followed by 37,875,299 voters (about 87.65% of voters), and the four winning political parties in the election were PNI, Masyumi, NI, and PKI. This election was held in two stages: first, to elect the members of the DPR (House of Representatives) held on September 29th, 1955, and second, on December 15th, 1955, to elect the members of the Constituent Assembly that would establish a new Constitution. Of 543 people elected to the Constituent Assembly, 514 came from the representatives of parties participating in the election, and the government appointed 29 people as the group representatives.

In the Constituent Assembly, the basis of the state became the central issue in the debate. The Constituent Assembly was polarized into three major groups: *first*, the parties including PNI, PKI, Perkindo, Catholic Party, PSI, and IKPI proposing the Pancasila State with 273 votes; *second*, the parties including Masyumi, NU, PSII, and Perti wanted an Islamic-based state with 230votes; and third, the parties, including Murba Party and Labor Party that wanted the socio-economic-based state with nine votes. At the end of the trial, these nine votes were delegated to the parties that proposed the Pancasila-based state (Mahendra, 1996). Since none of the groups received the votes for 2/3 of the Constituent Assembly, as stipulated in Article 137 of the 1950 Provisional Constitution, and the deliberation was deadlocked, a new development emerged in the field of constitutional law, i.e., the issuance of a Presidential Decree on July 6th, 1959 based on the *Staatnoodsrechts* Doctrine in which this decree contained three points: dismissal of the Constituent Assembly, implementation and enforcement of the 1945 Constitution and establishment of People's Consultative Assembly (MPR) (Usman, 2001).

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The debate in the Constituent Assembly took about 14 years but ended without results until the Presidential Decree of the Republic of Indonesia issuance on June 5th 1959. Importantly to note, the position of the seven words in the Jakarta Charter that is *the obligation to carry out Islamic law for its adherents* was a persuasive source as all the results of the BPUPKI session were the persuasive source for the *grondwet-interpretatie* of the 1945 Constitution, and the Jakarta Charter as one of the results of the BPUPKI session was also a persuasive source of the 1945 Constitution (Suny, 1987) However, after the stipulation of the Presidential Decree on July 5th, 1959 stating "*that we believe that the Jakarta Charter on June 22nd, 1945 enlivens the 1945 Constitution and is a series of units in the Constitution...*", Islamic law was then accepted as an authoritative source in the source of Indonesian constitutional law - no longer as the persuasive source. As found in Indonesian constitutional law, the Preamble and even the explanations of statutory regulations have a legal standing. The Preamble of the 1945 Constitution is a series of units of a constitution. In the Presidential Decree, apart from stipulating the Jakarta Charter in the Preamble, the Dictum also stipulates "*to stipulate that the 1945 Constitution is again valid*". Thus, the legal basis for the Jakarta Charter from the Preamble and the 1945 Constitution is stipulated in a statutory regulation called *Presidential Decree*, which according to the provisions of constitutional law, has equal legal standing.

As authoritative justice, Islamic law can be understood through the interpretation of *a contrario* (*mafhum mukholafah*) meaning that in Indonesia, no laws and regulations are contradicting Islamic law for its adherents. It also can be understood through the interpretation of analogy (*mafhum muwafaqah*) that the followers of Islam are required to carry out Islamic law. Therefore, the state must make laws and regulations that will enforce Islamic law in national law. Djuanda, Prime Minister of Indonesia in 1959, stated that acknowledging the existence of the Jakarta Charter as a historical document for the government also meant acknowledging its influence on the 1945 Constitution, not merely in the Preamble of the 1945 Constitution but also in Article 29, which must then become the basis for legal life in the religion sector. Hazairin stated that altering the words in the Jakarta Charter into "*Belief in one and only God*" contains the legal norms stipulated in Article 29 (1) of the 1945 Constitution that the Republic of Indonesia is based on the *Belief in One and only God*. This can only be interpreted that: the adherents of Islam are obliged to practice the teachings of Islamic law, similar to other religions obliged to practice their religion, and the state must make laws that will enforce Islamic law in national law (Suny, 1987)

a. Islamic Laws in the Old Order Era

Islamic law in the Old Order globally can be mapped into two periods: first, the Liberal Democracy period (1945-1959) at which the first general election was held, and there was a discussion based on the state in the Constituent Assembly and second, the Guided Democracy period (1959-1966) at which the state power from democracy was shifted to authoritarian power in the hands of Sukarno. Since the Presidential Decree of

July 5th, 1959, the political process has no longer taken place in Parliament. The political process only rested on three forces: Soekarno, Armed Forces, and PKI (Indonesia Communist Party). Soekarno began to have a suspicion of Muslims for the incitement of PKI since Muslims criticized the Soekarno government a lot (Thaba, 1995) As a consequence, the Masjumi Party was disbanded, and the HMI (Islamic Student Association) was threatened to be disbanded as well. At that time, the concept of NASAKOM was born, and Soekarno's power was ended with the coup event often called the September 30th, 1965 Movement that claimed the lives of 7 Main Generals of Armed Forces. However, after the coup failed, PKI had to accept the consequences and was declared the forbidden party in which Armed Forces and Muslims eradicated its followers and the grassroots.

b. Islamic Laws in New Order Era

The transition from the old order to the new order began along with the issuance of the SUPERSEMAR (The Order of March 11th) in 1966, where the letter became the basis for the power transfer from Soekarno as the ruler of the old order to Suharto, the ruler of the New Order (Alidar, 2012). This transition moment became good news, giving new hope for Muslims in Indonesia, where Muslims significantly contributed to the overthrow of the old order (Thaba, 1995). For Muslims, the old order regime, especially at the end of the phase, was very detrimental to Muslims because Soekarno sided more with the PKI and paralyzed Muslims, especially those involved in politics. For instance, it could be seen from the Masjumi Party's disbandment as a Muslim party. Soekarno felt that he had accommodated the interests of Muslims by establishing NASAKOM (National, Religious, Communist), where three parties symbolized the three elements, i.e., PNI as Nationalist and NU as the Religious and PKI as the Communist element. Soekarno used NASAKOM as an ideology balancing the existing political power and keeping Sukarno's position from being overthrown (Winata, 2017). NASAKOM entered into all components of the government structure, especially in the political field, as proven by the replacement of DPR as the result of the election into DPR Gotong Royong. The DPR Gotong Royong consisted of three groups: the Indonesian Party (PNI), Nahdhatul Ulama (NU), the Indonesian Communist Party (PKI), and the Military (Dhakidae, 2013).

What Muslims expected from the New Order was found to be different in reality. The Muslims did not have a desired position – even they were disappointed and again struggled as they did in the Old Order regime (Chaidar, 1998). Suharto left the Muslims while still not allowing Masyumi to rise – even though several Masyumi leaders were imprisoned by Suharto (Yuspin et al., 2020). As advised by Ali Murtopo, Suharto put forward the concept of Dwifungsi ABRI (dual function of Armed Forces) that prioritized political and economic stability (Syamsuddin, 2001). With technocrats and economists, Suharto rebuilt Indonesia. The economic sector development was on the priority scale, and political power was minimized, especially politics with the religious ideology, especially Islam, that must be kept away from the government for potentially disrupting Indonesia's political stability. Suharto's dislike was not only about political Islam, but also

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Suharto's revenge against Islamic groups who demanded the MPRS not to accept Suharto as the President of the Republic of Indonesia. However, it must be admitted that Suharto was good at dispensing strength and power that involved solid supporting elements, i.e., the Armed Forces, Golkar Party, the Bureaucracy, and Suharto himself.

The relationship between Muslims and the New Order Regime globally can be divided into three patterns (Thaba, 1995): (1) **Antagonistic Relation**, which started after the September 30th Movement of 1965 after destroying the PKI in which Suharto did not provide any opportunities to Muslims (Thaba, 1995) Even, the New Order government did a rigorous control over Islamic groups and marginalized the roles of religion in the political structure. From this situation, the rebellion to the state emerged from the charismatic Islamic leaders, as well as the emergence of DI/TII both in West Java led by Karto Suwirjo, in South Sulawesi led by Kahar Mazakkar and in Aceh led by Daud Beureuéh. The disappointment was also felt by Masyumi figures who were no longer allowed to live and even became a banned party equal to PKI as they were considered to have deviated from Pancasila and the 1945 Constitution (Thaba, 1995) Several policies of the New Order Government made relations getting worse, including (1) replacing the religion subjects with Pancasila Education in schools; (2) the 1973-1974 state budget for religious affairs was lowered; (3) the inclusion of Aliran Kepercayaan (Flows of Belief) in the GBHN (Broad Guidelines of State Policy) as part of an official religion that is equal to other religions; and (4) The increasing rate of Christianization activities that were "allowed" by the New Order government to carry out various apostasy activities under the guise of social activities, health assistance and free schools (Saridjo, 2002) (2) **The reciprocal-critical relationship** was characterized by mutual study and mutual understanding's position, starting with a political test conducted by the government by offering the concept of a *Single Principle* for socio-political organizations and subsequently for all mass organizations in Indonesia launched by Suharto on August 16th, 1982. The reaction of the polarized Muslims was divided into three categories (1) accepting without reservation, such as NU, PPP, Perti and the Indonesian Mosque Council; (2) accepting it out of necessity while waiting for the issuance of the Law on Community Organizations: Muhammadiyah and HMI; (3) those strongly refuting, those are PII (Indonesian Islamic students), GPI (Islamic Youth Movement) and other Islamic figures such as Deliar Noer, Syafruddin Prawiranegara, and Yusuf Abdullah Puar. The climax of this policy was through the Tanjung Priok incident (Sopyan, 2007). Suharto's idea, later on, was crystallized into Law No. 5 of 1985 and Law No. 8 of 1985 regulating the re-registration of mass organizations. Mass organizations that did not accept the single principle would not be registered with the consequence of being disbanded. (3) **Accommodative Relations** started after passing the political test, where Muslims increasingly understood that State policies would not keep them away from Islamic teachings (secularization). This was when a mutually accommodating relationship started. The government's suspicion of Muslims was decreasing, and the government did not supervise the Movement of the Mass Organization much. Many militant Muslims were in the Bureaucracy and determined the government policies. Specify when the

Association of Muslim Intellectuals (ICMI) was founded and when it reached a significant turning point as a communication venue for Muslims within or outside the Bureaucracy. ICMI refers to the government's political will to accommodate the thoughts of Muslims so that later they will be noticed and considered in making any national policies. BJ. Haibie was the central figure of ICMI with a solid and significant influence on the changes of the Muslims and the Nation. It was because BJ Habibie was Suharto's confidant and influenced Suharto's views and attitudes towards Islam. This accommodative relationship began with the repeal of Government Regulation No. 052/C/Kep/D.82 prohibiting the use of Muslim clothing (Jilbab) in public schools. This policy came out when the Minister of Education and Culture, led by Daoed Yoesoef. The most significant legal issues were the enactment of Law Number 7 of 1989 concerning the Religious Courts, the issuance of Presidential Instruction Number 1 of 1991, through finding opposition from secular and non-Muslim figures such as Frans Magis Suseno, Todung Mulya Lubis, Amir Machmud, and Soeprapto (Thaba, 1995) At the end of his reign, Suharto was more in favor of Muslims as seen, for instance, by giving a permit and even providing financial support for the establishment of Bank Muamalat, the first Islamic bank in Indonesia. Soeharto provided an initial fund of 3 billion, followed by Ministers, conglomerates, and high-ranking officials also depositing their money in Bank Muamalat. From the legal aspect, the position of Syariah Bank was enacted by Law Number 7 of 1992, in conjunction with PP No. 70 and 72 of 1992, concerning Banks based on the principle of profit sharing.

c. Islamic Law in Reform Era

When the New Order government collapsed due to the Student Reform Movement, BJ Habibie, at that time as the vice president, replaced Suharto's position as the President. When BJ Habibie became President, the legal reforms began, including Islamic law. Although his term of office was only two years, several Islamic nuanced laws were issued, such as Law Number 38 of 1999 concerning the Management of Zakat and Law Number 17 of 1999 concerning the Implementation of the Hajj. Ministers supported the BJ Habibie's movement and members of Parliament, dominated by ICMI and HMI cadres, termed *Ijo Royo-Royo* (Saepudin, 2016).

After BJ Habibie stepped down and was replaced by SBY, Law No. 41 of 2004 concerning Waqf was born, which perfected the laws on waqf such as Law No. 5 of 1960 on Agrarian Affairs, and PP No. 28 of 1977 on Land Waqf. Amendments to the Law on Judicial Power from Law No. 14 of 1970 into the Law 35 of 1999, into Law No. 4 of 2004, and finally into Law No. 48 of 2009 were the most important changes regarding the one-roof power, one of the effects of which was the removal of the dualism of supervision and development of the Religious Courts from the Executive to the Judiciary. The amendment to Law No. 7 of 1989 into Law No. 3 of 2006, then again into Law No. 50 of 2009, in particular, has given broader authority to the Religious Courts in resolving any Sharia disputes. Law No. 18 of 2001 was replaced with Law No. 11 of 2006 concerning Special Autonomy for Nangroe Aceh Darussalam (Edyar et al., 2020).

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Meanwhile, during the Jokowi administration, it was not in line with expectations, especially in the second term when the vice president was a Kyai. Only two laws with Islamic nuances have been promulgated, one of which is the Constitutional Court Decree regarding the age limit for marriage, i.e., Law No. 16 of 2019 and Law No. 18 of 2019 concerning Islamic Boarding Schools.

3. Applying Islamic Law in the Indonesian legal system: Measuring Opportunities and Challenges.

Several profitable opportunities might be the basic capital for applying Islamic law in the Indonesian legal system. *First*, Muslims are the majority group who can calculatedly play a role. However, it all depends on the cohesiveness of Muslims in politics. *Second*, the majority are adherents of Islam, and Islamic law is an inherent part of Indonesian Muslims because some Islamic laws are the consciousness of Muslims practiced in everyday life. Islamic law has a tight relationship with the Indonesian people emotionally, sociologically, and anthropologically so they can easily accept its implementation. In other words, the prospect of Islamic law in developing National Law is very positive as culturally, juridically, sociologically, and anthropologically it has strong roots. Objectively, it can be assessed that Islamic law has a great opportunity to contribute to the formation of national law. The relationship pattern between the state and religion is an integralist relationship, i.e., a pattern of relationships that understand and need each other and entirely become unified. This can be proven with state legal politics that requires the development of religious life and religious law in the life of national law as theorized by M Thahir Azhari into the Concentric Circle theory showing the era bond between religion, law, and the state (Azhari, 1992).

The statement that the law is a political product challenges Muslims. Politics highly depends on who (political party) is ruling. As long as Muslims are not solid in politics and are still fragmented, it will not be easy to come to power. Meanwhile, government power as part of political will is critical. Without the government's will, it is difficult for Islamic law to be a part of the legal system in Indonesia. The sociological background and the needs of society as a whole strongly determine law formation. However, in a practical setting in Indonesia, law formation is dominated by political powers that carry out the task of forming the law (Wahyuni, 2014). Law formation cannot be separated from political conditions determining the formation of a legal product (Salam, 2015). Daniel S Lev argued that the most powerful thing in the legal process is the conception, structure, and political power. Law has always been a political tool, and the place of law in the state depends on the political balance, the definition of power, or the evolution of political, economic, and social ideology (Lev, 1990). There are two political powers: formal political power within the power structure of state institutions such as the President, DPR, and other institutions, and *informal political power* such as political parties, community organizations, community leaders, non-governmental organizations, and professional organizations (Salam, 2015) It can be concluded that the formation of

legal products is produced from the determination of political power through the political process in authorized state institutions (Salam, 2015).

Another challenge is the internal challenge of Muslims that at least includes three: *first*, the application of Islamic law in Indonesia must be able to offer objectification of Islamic law, i.e., academically proving that Islamic law can provide an offer for the realization of justice, peace, equality, and legal certainty. It must be proven that Islamic law has several essential values of justice, peace, equality, and legal certainty and it must be proven that Islamic law is *shalihun likulli zamaan wa makaan*. *Second*, Muslims should not be trapped in the symbolism or formalization of Islamic law, which offers more cover and less content. *Third*, the degradation of the Islamic spirit among the younger generation of Islam is related to globalization and the impact of liberalization and secularization values that are difficult to counter. Meanwhile, the external challenge is the emergence of non-Muslim groups who hate and fear Islam (Islamophobia). Meanwhile, the external challenge is the competition between Islamic law and western/international law that uses the power of formal institutions such as the United Nations and the political power of the superpowers that exert pressure on developing countries to implement their laws in Muslim countries.

C. CONCLUSION

Due to the fact that it is one of the authoritative sources, the place of Islamic law in the Indonesian legal system is considered to be particularly significant. On the other hand, whether or not it will be adopted as Islamic law is heavily dependent on Muslims themselves. The political nuance of the ruler has a significant impact on the legal nuance that is produced as a direct outcome of the political process. In order to accomplish this goal, it is necessary for Muslims to exercise political power and legal authority. The objectification of the law must continue to be pursued in order to offer the general public, especially those who subscribe to the ideology of Islamophobia, that Islamic law, as it is studied in academic circles, is a law that incorporates justice, equality, and peace. The symbolic offer of Islamic law evolves into a non-strategic effort that has the potential to spark conflict.

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