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Competing Political Ideologies on the Implementation of Islamic Law in Indonesia: Historical and Legal Pluralist Perspectives *)

M. Arskal Salim GP

Abstrak: Kontestasi ideologi-ideologi politik di Indonesia telah muncul sejak tahun-tahun awal pasca kemerdekaan. Perdebatan yang terjadi berpusat pada apakah negara Indonesia yang baru merdeka akan secara resmi menerapkan hukum Islam. Artikel ini meninjau peristiwa-peristiwa sejarah yang menunjukkan kontestasi yang terus-menerus berlangsung di antara berbagai macam kubu ideologis dalam tingkat dan bentuk yang berbeda. Dengan menggunakan perspektif sejarah dan pluralisme hukum, artikel ini merefleksikan beberapa kasus pada waktu dan tempat yang berbeda untuk menunjukkan tipologi ideologi politik sepanjang sejarah modern Indonesia.

Kata kunci: Islam Indonesia, hukum Islam, ideologi politik, pluralisme hukum

Abstract: A contest between different political ideologies took place in the early years after the independence of the Republic of Indonesia. The debate centered on whether the new state would officially apply Islamic law. This article looks at the past events that demonstrated the recurring contest between various ideological camps at different levels and forms. Employing both historical and legal pluralist perspectives, this article ponders several themes at different time and places to show typologies of political ideologies throughout Indonesian modern history.

Keywords: Indonesian Islam, Islamic law, political ideologies, legal pluralism

ملخص: إن وجود التيارات والايدلوجيات السياسية باندونيسيا كانت ظهرت منذ أوائل استقلال اندونيسيا. فالنقاش يتمحور في هل سيطبق الشريعة الاسلامية فور استقلالها. تدرس هذه المقالة الأحداث والوقائع التاريخية السياسية التي تستمر بين شتى التيارات والفئات على مختلف الاشكال، و باستخدام مناهج التاريخ و التعدد القانوني وهذا البحث يحلل عدة القضايا في مختلف الأماكن والفرص لتثبت أوصاف ايدلوجيات السياسية طوال تاريخ اندونيسيا المعاصرة.

الكلمات المفتاحية: اسلامية اندونيسيا، الحكم الشرعي، تيارات ايدلوجيا الاسلامية، التعدد القانوني

Introduction

Indonesia, the largest Muslim population in the world, has from time to time seen the contestation between different political ideologies on the formal implementation of Islamic law. During many meetings of Indonesian leaders prior to Indonesia's independence in 1945, the contestation emerged in the constitutional formulation and was initially about the controversial 'seven word' phrase: "dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya" [with the obligation to practice Islamic sharia for Muslim believers]. While some Muslim leaders wanted to incorporate this phrase into the Indonesia's constitution, the nationalist leaders (who were not necessarily non-Muslim adherents) rejected the 'seven word' phrase. Instead they preferred to have Indonesia as a nation state without an official religion.

This article would like to discuss the competing political ideologies of making the Republic of Indonesia a state that officially applies Islamic law. The article will look at the past events that demonstrated the recurring contest between various ideological camps at different levels and forms. Employing both historical and legal pluralist perspectives, this article would trace both ideological camps back to their own roots. It ponders several themes at different time and places to show typologies of political ideologies throughout Indonesian modern history.

The following section would firstly present a theoretical framework applied in this article. It would then be followed by a discussion on the issue in question from both discursive and historical perspectives. Before the concluding section, three sections that discuss the contestation between different political ideologies on separate issues, such as constitution, legislation and regional regulation, would precede.

Law As A Contested Field: A Theoretical Framework

In his work *Islam, Law and Equality in Indonesia: Anthropology of Public Reasoning*, John Bowen (2003) examined the structure of disputes and the anatomy of legal reasoning that took place within and across normative legal orderings, which based either on Islam, custom or the state national law. Bowen focused mostly on interpretations, different ways of justification and contending argumentations about religion and social norms within the disputes among Muslim people

in Aceh, the Gayo in particular, as well as the tension between local and national dimensions of Islamic legal reasoning in general. Applying Rawl's perspective of "public reason", Bowen explored how Indonesians attempted to resolve their problems in relation to law, religion and the ideal picture of equal rights and status in Indonesia's pluralistic society.

Going along the line of Bowen's work above, this article in discussing different political ideologies in the implementation of Islamic law in Indonesia would apply an approach that ponders law as a contest for and against domination. I therefore consider law as a contesting field where different normative orders or legal reasoning may exist parallel to and in competition with each other with no single system self-evidently superior to the others (F. von Benda-Beckmann, 2002; K. von Benda-Beckmann, 2001). In short, law has been an ongoing encounter between different political ideologies as well as legal reasoning.

Between Islamic and Fatherland Nationalism

There was widespread conviction that nationalism in Muslim countries was a direct result of the foreign, non-Muslim colonialism of Islamic lands. Thus, in the light of colonialism, nationalism was often understood as a shared response of Muslim peoples to the foreign infidel power. As William C. Smith (1957: 74) has already pointed out, this nationalism devoted to resisting Western imperialism was "compatible with Islam in its traditional, in its religion, and its social and every other aspect." For this reason, it is no wonder that as early as the twentieth century some Muslim leaders in Indonesia were prone to perceive Islam automatically as nation. As cited in Noer (1980:260), Muhammad Natsir, a former leader of Masyumi party, argued that Islam in Indonesia had, indeed, been a unifier among its believers across the different remote islands of the archipelago. For many inhabitants of the archipelago, Islam had played an important role in mobilizing and strengthening the feeling of being united under the oppression of the non-Muslim colonialists, the Dutch.

The foundation of Sarekat Islam in 1911 had initially established this Islamic nationalism. At its Sixth Congress in Surabaya (1921), Sarekat Islam under Tjokroaminoto and Agus Salim restated the importance of Islam as both the foundation and aims of the party movement. They developed Islamic nationalism to mean not only the unity of the Indonesian Muslims but also solidarity with the struggle of

Muslims elsewhere in the world (Bruinessen, 1995:120-121). Because of this approach, the National Indies Party, which promoted the concept of fatherland nationalism (a concept of nationhood based on the territories in the archipelago occupied by the Netherlands), accused the leaders of Sarekat Islam of developing an Islamic nationalism as part of Pan-Islamism.The leaders of Sarekat Islam, however, rejected fatherland nationalism because it divided the international community of Muslims and because it originated from Europe and brought war and imperialism (Ricklefs, 2001:190). Agus Salim, one of the founding leaders of Sarekat Islam, argued that the love for the country as in Europe encouraged the worshipping and idolizing of one's nationality, and he further pointed to other dangers dormant in nationalism that nationalists were prone to commit. For Salim, this meant not that his party abandoned the love of one's country, but that it continued to regard it as an important principle. Love of country, according to him, should be in favor of justice as fixed by God, meaning that it should not exceed faith in God (Dahm, 1969:175).

With their conception of Islamic nationalism, the leaders of Sarekat Islam desired a solution to the international caliphate question. At its special meeting in Surabaya on 4–5 October 1924 (seven months after the abolition of the Ottoman caliphate), Sarekat Islam, through its leader, Tjokroaminoto, emphasized the need for Muslims to have a replacement caliph. As Muslims of the East Indies at that time still lived under another government, Tjokroaminoto explained the relevance of the caliphate as a religious one. Tjokroaminoto's explanation suggests that if Muslims of the East Indies had a chance of self-government, the caliphate issue for them would be politically important. In light of this, the political future of Islamic nationalism proposed by the leaders of Sarekat Islam seemed to depend on whether or not Pan-Islamism would succeed. Finally, since there was no clear prospect for the future of the caliphate, the leaders of Sarekat Islam gave up on the campaign for Pan-Islamism in 1929 and shifted to favor Indonesian nationalism (Bruinessen, 1995:135).

While Sarekat Islam concluded its debate on Islamic nationalism by the late 1920s, another Islamic organization, the Persatuan Islam (Persis), established in 1923, took over the discourse in the early 1930s. This Muslim organization, which was primarily founded for discussions on religious issues, furthered the articulation of Islamic nationalism vis-à-vis

fatherland or Indonesian nationalism. Persis' criticisms were due to the fact the proponents of Indonesian nationalism ignored the use of Islamic elements in their movement for Indonesia's independence. Persis leaders criticized Indonesian nationalists who were in the view that "Islam could not be the basis of the nationalist movement since Christians, Hindus, Buddhists and even animists were also involved and would not support a movement intended to favor Islam and place themselves in a subservient position" (Federspiel, 1970:87).

The criticisms launched by Persis figures, such as Ahmad Hassan and Mohammad Natsir, were largely based on the fact that almost 90 percent of the Indonesian population was Muslim and that Islam was the bond that unified people from diverse places and ethnic and language backgrounds in the East Indies. For this reason, while Hassan questioned as to why the 90 percent Muslim majority must be overlooked because of the 10 percent non-Muslim minority, Natsir contended that without Islam there was no Indonesian nationalism, since Islam had first planted the seeds of Indonesian unity and removed attitudes of isolation in remote islands (Federspiel, 1970: 87-89; Noer, 1980:281).

The polemic between Natsir and Soekarno in early 1940s clearly articulated the different views on the political ideology for Indonesia nationalism. On the one hand, Natsir placed heavy emphasis on Islamic, rather than Indonesian, nationalism. With this emphasis, Natsir sought for the state to assist Muslims in observing their religious duties. On the other hand, Soekarno preferred to see Indonesian nationalism as having a neutral position toward religion that would liberate the state from the intervention in religious affairs.

Natsir distinguished the political goals of Muslims in an independent state of Indonesia from those of groups who supported the idea of neutrality toward religion, saying that:

> The objective of Muslims to fight for independence is to achieve the independence of Islam, in order that the Islamic rules and structures of Islam can be applied, for the salvation and the dignity of Muslims in particular and all God's creatures in general (as cited in Noer, 1980:281).

It is no wonder that Natsir rejected the concept of a religiously neutral state proposed by the nationalist group. Moreover, Natsir further sought to convince people that the implementation of shari'a in Indonesia would not spoil or endanger other religions. For this, he contended

that a refusal to implement Islamic law in Indonesia because it would hurt non-Muslims feelings would tyrannize Indonesian Muslims, whose population dominates the country, and would thus violate the rights and the interests of the majority (Noer, 1980: 315).

Responding to Natsir's argument, Soekarno contended that there was dissonance between the concept of democracy and the notion of unity of religion and state. For Soekarno, such a notion would only create a sense of discrimination, particularly among non-Muslims. In his essay titled "Saya Kurang Dinamis" [I am less dynamic], he wrote:

> [The] reality shows us that the principle of the unity of state and religion for a country whose inhabitants are not 100 percent Muslim could not be in line with [the principle of] democracy. In such a country, there are only two alternatives; there are only two choices; the unity of state-religion, but without democracy, or democracy, but the state is separated from religion! The unity of religion and state, but authoritarian and betray democracy, or committed to democracy yet disregard the unity of religion and state! (as cited in Noer, 1980: 307).

> How do you put your ideals (about the unity of religion and state) into practice in a country in which you will uphold democracy, where some of its population are not adherents to Islam, like Turkey, India and Indonesia, [and] where [in these countries] there are millions of Christians or other believers and their intellectual groups in general do not subscribe to Islamic thought? . . . If you rule the country in which many of the people are non-Muslims, will you decide by yourselves that Islam is the basis of the state, the constitution is an Islamic constitution, [and] all laws must be Islamic shari'a? (as cited in Noer, 1980: 306-307).

All these Soekarno's remarks suggest that it is not acceptable in a modern nation-state to enact a national law by looking only at one source of religion to apply to various people with different backgrounds. Soekarno, however, acknowledged that every element of society would have a chance to contest, influence, and introduce their religious views in state regulation. Thus, the result that might come from this process was a single uniform law applicable to all citizens, regardless of their backgrounds.

Natsir considered Soekarno's view that Indonesian Muslims should dominate the parliament to be able to set and determine the state agenda, resulting ultimately in the formulation of policy decisions imbued with Islamic values, as irrelevant since Islam already embraced the majority of Indonesian inhabitants in any case (Noer, 1980: 304). For Natsir, Indonesia must be automatically a Muslim

country. Soekarno's suggestion, he thought, might be appropriate for Muslims who live in a predominantly non-Muslim democratic country (Noer, 1980:314). With this understanding, Natsir's conception about democracy at that moment was only majoritarianism, while Soekarno emphasized the important role of procedures in democracy, which, according to many political scientists (Dahl, 1971; Schumpeter 1994), is much more significant than any other aspect of democracy.

Between Islamic and Secular Constitutionalism

Ann Elizabeth Mayer (2002: 183) has defined Islamic constitutionalism as based on "distinctively Islamic principles." What "Islamic principles" entail here, however, remains in disagreement. In spite of this, to identify whether or not a country has an Islamic constitution depends much on how Islam is defined in the constitution. The constitutional position of Islam as a state religion, therefore, always becomes pertinent during the process of constitution making or political reform in Muslim countries. In addition to constitutional recognition of Islam as the state religion, the acknowledgment of the status and the role of shari'a in the constitution of a Muslim country has been another decisive criterion for distinguishing Islamic constitutions from others.

The way an Islamic constitution refers to the shari'a and attributes its significance differs markedly from one Muslim country to another. A number of Islamic countries explicitly define the shari'a as the source of national legislation. Other countries maintain that any law enacted can not be contrary to Islamic tenets. There are also a few countries that constitutionally acknowledge the partial impact of the shari'a in certain legal matters (mostly personal or family laws).

Because of the status and the role of shari'a in the constitution is central to what is called 'Islamic constitutionalism', the position of shari'a in a constitution largely determines whether it is Islamic or not. For this reason, it is not surprising to find that what Muslim leaders are most concerned with during the process of constitution making is the status and the role of shari'a law. During the months prior to Indonesia's independence on the 17th of August 1945, there were fierce discussions on whether or not the new constitution of Indonesia should stipulate Islam as a state religion and shari'a as the law of the country. Indonesian Muslim leaders, such as Ki Bagus Hadikusumo, demanded that the

Indonesia must be based on Islamic principles because Islam has been the largest and the most important part of the unity of Indonesia for a long time. However, the secular nationalist figures opposed and criticized the idea of Islamic constitutionalism. Soepomo argued that:

> If an Islamic state is created in Indonesia then certainly the problem of minorities will arise, the problem of small religious groups, of Christians and others. Although an Islamic state will safeguard the interests of other groups as well as possible, these smaller religious groups will certainly not be able to feel involved in the state. Therefore, the ideals of an Islamic state do not agree with the ideals of a unitary state which we all have so passionately looked forward to (Yamin, 1959:117).

On the constitutional relationship between religion and the state, Mohammad Hatta, another important nationalist figure, pointed out:

> We will not establish a state with a separation of religion and state, but a separation of religious affairs and state affairs. If religious affairs are also handled by the state, then the religion will become state equipment and... its eternal character will disappear. State affairs belong to all of us. The affairs of Islam are exclusively the affairs of the Islamic ummah and the Islamic society (Lev, 1972: 40).

Until early June 1945, there was an increasing tension as both Muslim leaders and nationalist figures could achieve no consensus on the clause of religion in the new constitution of Indonesia. Seeking for a solution, nine members from both contending groups were chosen to have special meetings and to discuss crucial parts. They managed to reach a compromise on the 22nd of June 1945. The nationalist group had an assurance from the Islamic group that the state of Indonesia would not be based on Islam, while the Islamic group received a concession from the nationalist group that the practice of Islamic shari'a would be obligatory for Muslim citizens. This compromise, later well-known as the Jakarta Charter, constitutes the 'seven words' *dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya* [with the obligation for adherents of Islam to practice Islamic shari'a] inserted in the formulation of the Pancasila as part of the draft preamble of the 1945 Constitution. Later in the meeting on the 16th of July 1945, it was agreed that the draft constitution also included two other important points of Islamic constitutionalism: (1) to practice Islamic shari'a in Article on religion and (2) Muslim qualification in Article on the President of Indonesia.

However, all the reached compromise as above was not the final consensus. The rapid political developments that followed the declaration of the independence of Indonesia (17 August 1945), especially those that occurred on the day after that, 18 August 1945, cracked all the previous agreement and wiped out all concessions given to the Islamic groups. The seven words in the preamble as well as in Article on religion were deleted and replaced with "Ketuhanan Yang Maha Esa" (One Almighty God). In addition, Muslim qualification for the president was withdrawn entirely from the constitution. Remarking on the new consensus achieved on the 18th of August 1945, Boland (1982: 35-36) said:

> [the meeting] finally came to the conclusion that in fact Indonesia only could become and remain a unity if the Constitution contained nothing that was directly connected with Islam. Therefore articles on Islam as the official religion of the state, the condition that the President must be a Muslim and "the obligation for adherents of Islam to practice Islamic law" had to be removed.

The new consensus of the 18th of August 1945 regarding the deletion of the seven words of the Jakarta Charter become one of the most controversial issues in the history of modern Indonesia. While the Islamic groups saw the consensus on that day as temporal or conditional, the nationalist groups conceived it as a substantial agreement made by the founding fathers for the sake of Indonesian unity. And, thus, given the accepted draft constitution has not included anything about Islam or shari'a, this Indonesian constitution ratified on the 18th of August 1945 cannot be identified as Islamic constitutionalism.

For some Muslim leaders, the consensus reached on 18th of August 1945 was temporal and hence in the aftermath period of Indonesia's independence repeating attempts were made to reintroduce the Islamic shari'a into the constitution. There were at least three times that Muslim leaders or parties sought to give sharia a constitutional status, thus transforming the constitution of Indonesia into Islamic one. The first attempt was in the meetings of the Constituent Assembly (*Dewan Konstituante*) from 1957 to 1959. The second effort took place in the first years of the New Order era (1966–1998), during the meetings of the Provisional People's Consultative Assembly (MPRS) Annual Session of 1966 to 1968. And finally, the third attempt occurred during the process of constitutional amendment in the People's Consultative

Assembly (MPR) Annual Sessions of 2000, 2001, and 2002. All these attempts were, however, unsuccessful and the constitution of Indonesia remains secular.

Between Islamic and National Legislation

A growing desire to make the Indonesian government responsible for implementing Islamic law was observable in the first two years of the New Order regime (1966-1998). Despite the seven words of the Jakarta Charter was excluded from the constitutional debate in the MPRS sessions during the years 1966, 1967 and 1968, some Muslim figures believed that the Jakarta Charter still had influence over the preamble of the 1945 constitution as well as Article 29 of the same document. This belief that the Jakarta Charter remained valid as the underpinning of Indonesian religious life was to do with Muslim leaders' understanding that the President Soekarno's decree in 1959 that recognised the influence of the Jakarta Charter as inspiring and being linked in unity with the 1945 constitution.

In light of this, some Muslim leaders, especially from the Nahdlatul Ulama (NU), argued that the Jakarta Charter should be considered a source for Indonesian laws, regardless of its position in the constitution. The Jakarta Charter could then be used to promote the unification of laws among Muslims, and this was regarded as more important than obliging Muslims to practice shari'a (Feillard 1995: 120-141). With this in mind, some prominent Muslim figures who had key positions in the Ministry of Religious Affairs formally proposed the legislation of zakat. In July 1967, Saefuddin Zuhri, then Minister of Religious Affairs, presented a draft Zakat Law to the legislature (DPRGR). The draft was also sent to both the Ministry of Finance and the Ministry of Social Affairs for feedback. Although the latter never responded, the Minister of Finance sent a reply with a suggestion that the zakat management would be better regulated by ministerial regulations instead of by an enactment. This suggestion from the Ministry of Finance led the legislature to not pursue discussion of the draft Zakat Law presented by the Ministry of Religious Affairs (Salim, 2003).

The Minister of Finance's suggestion may have also inspired the newly appointed Minister of Religious Affairs, Mohammad Dachlan, to issue a ministerial decree concerning the foundation of the Badan Amil

Zakat (the zakat agency) and the foundation of *Baitul Mal* (Islamic Treasury) that would be responsible for managing the zakat paid by Muslim citizens. These regulations, which were issued in July 1968, provided that a governmental zakat committee would be established at all administrative levels (both district and subdistrict) across the country (Salim 2003). Under the leadership of Minister Dachlan, the Ministry of Religious Affairs set out to ground all its religious programs in the framework of the Jakarta Charter, which he conceived it to be constitutional. This, however, was in contradiction to the standpoint of the Indonesian New Order government that the Jakarta Charter was not part of the 1945 constitution.

The ministerial regulation on zakat, issued by Minister Dachlan, did not last long, however. In fact, it ended even before any steps were taken to implement it. It was indirectly but effectively annulled three months later by President Soeharto's speech at the celebration of the Isra' Mi'raj (the Prophet's Ascension) on 26 October 1968. Instead of endorsing the establishment of official zakat agencies throughout cities and towns in Indonesia, as stated in the ministerial regulation, President Soeharto co-opted the administration of zakat by offering himself to take over the whole responsibility for collecting and distributing zakat, on a personal basis, as a private citizen (Salim, 2003).

The Ministry of Religious Affairs seemed not to immediately understand the implications of President Soeharto's speech. Instead, the minister assumed that the speech was somehow confirming the ministerial decree on zakat, and so, in the same week as Soeharto's speech, further, more detailed rules on zakat implementation were released. The Ministry of Religion only came to the realization that Soeharto objected to the ministerial decree on zakat after receiving a letter, dated 16 December 1968, from the cabinet secretary. In January 1969, compliant with the cabinet secretary's letter, the minister of religion issued a ministerial instruction (No. 1 of 1969) for the deferment, or more precisely the revocation, of the ministerial decree on the zakat agency. Following that particular ministerial instruction, the Ministry of Religion then circulated a letter (No. 3 of 1969) supporting President Soeharto's scheme on the collection of zakat. This letter announced that all results of zakat collection, instead of being sent to *Baitul Mal* (Islamic Treasury) of the Ministry of Religious

Affairs, would be deposited in President Soeharto's account at post offices throughout Indonesia (Salim, 2003).

It must be noted here that the operation of the zakat agency under the personal auspices of President Soeharto ran only for a few years. In 1974, President Soeharto concluded his role as a national personal *amil* (a person or institution that manages the collection and distribution of zakat). Once President Soeharto ceased to be national *amil* in the mid-1970s, there was no clear legal basis for several government-sponsored or semiautonomous zakat agencies to exist. The only legal basis they had during that time was the president's circular letter issued in 1968, which suggested the foundation of an organizational apparatus to collect zakat in the respective host institutions of zakat agencies. Now that the president had withdrawn from this duty, would his circular letter remain valid? His maneuver left the legal basis of zakat collection in Indonesia non-existent, leaving the zakat agencies without a foothold and lacking a regulatory foundation. In fact, not even a single legislation was issued to support the zakat management until President Soeharto resigned in 1998. As the zakat agencies had to operate without any clear national policy, all this arguably can be seen as an attempt to refuse Islamic legislation in Indonesia initiated by the Ministry of Religious Affairs during the early years of the New Order period.

By early 1970s, there was no more a legal reference made to the Jakarta Charter for Indonesian regulations at different levels. Despite this, Article 29 of the 1945 Constitution on Religion has been understood by some Muslim jurists and religious scholars to provide a legal basis for the introduction of Islamic law into national state laws. Hazairin (1970) argued that Article 29 could be interpreted in three ways to welcome Islamic into the project of Indonesian national legislation. Firstly, any law that contravenes norms or rules belong to religious believers shall not be enacted or applied. Secondly, if a particular religious rule in order to be practiced needs governmental assistance, the state must provide believers with equipment or devices to carry out those religious practices. And finally, any religious rule that can be observed without assistance from the state, the responsibility for practicing such religious rule goes to individual believers. There is no clear information to what extent to this Hazairin's thought has influenced Muslim leaders who look forward to the implementation of

Islamic law in Indonesia or jurist scholars who often protest the lack of Islamic elements in Indonesia's legal system.

The acknowledgement of Islamic law as a source of national legislation has nothing to do with the Jakarta Charter. Instead, Islamic law was recognised to offer inputs for the formulation of national legislation thanks to several high officials of the New Order regime who paid attention to developing national legal system based on local contexts. They all were aware that in a country that constitutes Muslims as a majority population, Islamic law couldn't be easily ignored. Addressing an audience at an important meeting in Jakarta in late 1980s, Minister of Law, Ismail Saleh, said:

> We cannot deny the fact that most of Indonesian population is Muslim…. And because Islamic law has played a key role in shaping Muslims' every day life in many aspects, the best we can do is to transform and incorporate norms of Islamic law into national legislation so long as those norms are not contradictory to national ideology (Pancasila) as well as the 1945 constitution, and such legislation is closely related to specific legal needs of Muslims…. There are many universal norms in Islamic law which can be used to prepare a national legislation (Ali 1999: 48-49).

The above statement from Minister of Law was a response to the increasing political tension in Indonesia owing to the fact that the legislative members discussed the Bill of Religious Court Law, which granted Muslim citizens to have their own family disputes resolved at a special court. Following Minister Ismail, Minister of Religious Affairs for two periods (1983-1993), Munawir Sjadzali, delivered a talk before the legislature saying:

> The development of (national) law should not only be directed toward the unification of law, but also needs to pay attention to special legal needs of a group within the people, so that justice can be upheld for them (Sjadzali, 1991).

All this was a breakthrough to the introduction of Islamic law into national legal system even without having any reference to the Jakarta Charter. From then on, the politics of legislation had shifted from the unification of law to 'legal distinction', which officially allows legal pluralism to exist in Indonesia's legal system. As a result of this policy, Indonesian laws that have been enacted since the 1990s included a variety of Islamic rules as below:

1. Marriage, divorce and inheritance
2. Finance and banking system
3. Insurance
4. Stock exchange
5. Land endowment
6. Pilgrim or hajj to Mecca
7. Islamic alms or zakat

Given all this development in the past twenty-five years, one could argue that Islamic legislation has been acceptable to certain limits. This condition would have not existed unless there was a shift in political ideology from secular to Islamic legislation in the early 1990s.

Between Islamic and Just Regional Regulation

Since Islamic legislation at the national level has been feasible, Islamic lawmaking at the regional level now has an example to follow. In Indonesia's post-Suharto period (1998 onwards), there was an increased interest in Islamic regional regulations in numerous provinces and districts all over the country. This implementation of Islamic law at the regional level occurs when the state grants degrees of autonomy to particular communities or regions. This has become a new strategy of the implementation of Islamic law in Indonesia especially because repeated attempts to give sharia a constitutional status have failed and projects of incorporating Islamic law into the national legislation have only achieved a limited success.

Boland (1982: 185) argued long ago that permitting the implementation of sharia in Aceh would create a precedent that other Islamic regions in Indonesia would be tempted to follow. And indeed, after post-Soeharto central governments allowed Aceh to implement sharia through a series of special autonomy laws (Law 44 of 1999, Law 18 of 2001 and Law 11 of 2006), other provinces and districts did begin to imitate Aceh by introducing regional regulations that contained Islamic injunctions. These regulations took various forms: they were either passed by legislative bodies e.g. as Qanun (exclusively applicable in Aceh) or *Peraturan Daerah* (Regional Regulations) a form of legislation that exists in all regions outside Aceh, or they were decreed by the executive

at regional government levels (governor, mayor and head of district) e.g. in the form of *Keputusan* (Decrees), *Instruksi* (Instructions), *Imbauan* (Appeals) or *Surat Edaran* (Circular Letters). These regional regulations are concerned with three broad sets of issues: first, public order and social problems such as prostitution, consumption of alcohol and gambling; second, religious skills and obligations, such as reading the Qur'an, attending Friday prayers and paying the wealth tax (*zakat*); and third, religious symbolism, including Muslim dress.

This new development has generated heated debate between different political ideologies among members of the Indonesian national legislature. The proponents of Islamic-based regulations rely on at least three arguments (Salim 2007). Firstly, the majority of the Indonesian population is Muslim, and the Muslim kingdom antecedents of the state of Indonesia did implement sharia rules. Secondly, the introduction of Islamic law into regional regulations will not create problems as long as they are drafted openly and enacted by democratically elected provincial or district legislatures. And thirdly, Indonesia's legal–political system allows the implementation of Islamic law at the regional level: under Laws No. 22/1999 and No. 32/2004 on regional government, it is legitimate for provincial and local governments to enact regulations that seek to overcome social problems and maintain public order.

In relation to this last point, Indrayana (2005: 6) asserts that the Islamic regional regulations were deliberately designed to avoid clashing with higher laws stipulating that regional governments have no authority to regulate on religious matters. To this end, the regulations emphasise methods and measures to establish public order within the society, rather than appealing to Islamic law itself. This means that they cannot be annulled by the central government following executive review, as would be possible if a lower-level government regulation was considered to be in conflict with a higher-level law or the constitution.

Opponents of Islamic regional regulations are unconvinced by the above arguments. For example, Todung Mulya Lubis, a high-profile lawyer and human rights activist, has set out three objections to those regulations. Firstly, they conflict with the constitutional guarantee of religious freedom for all citizens to practice their religion according to their own beliefs. Secondly, much of the content of these regional regulations (on gambling, prostitution and alcohol consumption)

is already covered by the penal code, so additional regulations at the province or district levels are redundant. Thirdly, even if introduced by democratically elected legislatures, these regulations are unacceptable because they amount to non-democratic negation of minority rights by discriminating against non-Muslim citizens (Salim, 2007).

The key players for the implementation of Islamic law both at the province and district levels are not necessarily Islamic parties. While Islamic parties in the past were actively involved in promoting the incorporation of Islamic injunctions into the constitution as well as national laws in many instances, their role in the recent introduction of Islamic law into regional regulations was somewhat overtaken by politicians of non-Islamic parties, such as Partai Golongan Karya, Partai Demokrat and the like. It seems plausible if one argues that the localization of Islamic law has been often motivated by political considerations, in which these regional regulations were issued especially to further the short-term political agendas of the incumbent governors or district heads—that is, to improve their chances of re-election. According to this analysis, the introduction of regional laws that contain Islamic injunctions was often a means for district heads/mayors and political parties of achieving success in future local elections. To obscure this motive, the localization of Islamic law is often wrapped in language of regional autonomy or decentralization, under which each province or district claims to have a right to express its own special religious identity (Salim, 2007, 2013).

Apart from political parties' support to the localization of Islamic law, the same support also came from the Indonesian Ulama Council (MUI). In this case, MUI issued a statement strongly supporting the enactment of the Islamic regional regulations and recommending their extension to other territorial jurisdictions. Kyai Haji Ma'ruf Amin, chair of MUI's fatwa commission, defended those regional regulations, arguing that they were legitimate so long as they did not conflict with higher-level regulations, and claiming that there was a consensus on the need for them among local members of the community (Salim, 2007).

Islamic regional regulations seem to receive an implicit support from a wider audience including the Indonesian Supreme Court. When the Tangerang regional regulation that bans women to walk out of home during nighttime was submitted to the Supreme Court for a

judicial review, the judges who examined this case surprisingly did not accept the claims made by the petitioners that the regulation in question had violated constitutional rights of citizens. Instead, the judges were of the opinion that the Regulation was passed through a democratic process. In the view of the court, the Regulation as such was legitimate political discretion (*implementasi politik*) exerted by the government of Tangerang city and thus fell under the political authority of the executive and legislative branches of the municipal government. The judges of the Supreme Court drew mostly on procedural arguments rather than on the substantive elements of the regulation in question, and, hence, decided that no superior law was violated by that particular regulation. The court finally refused to evaluate the case on the ground that it was not eligible for judicial review (Salim, 2013).

Conclusion

The Indonesian state ideology, Pancasila, is initially and widely believed to reflect secular principles. However, the latest development, especially when Islamic regional regulations flourish in many parts of Indonesia, shows that Pancasila can be interpreted in many different ways either to defend or to denounce the implementation of Islamic law in Indonesia. On the occasion of the commemoration of Pancasila's birth on the 1st of June 2006, Todung Mulya Lubis read out a 'Declaration of Indonesian-ness' (Maklumat Keindonesiaan) signed by 17 prominent Indonesians. The Maklumat argued strongly for the defense of Pancasila as an ideology that respects pluralism and separates religion and the state. On the relationship between Pancasila and religion, the *Maklumat* clearly mentioned the distinction between the two, stating that: 'Indonesia does not regard Pancasila as religion, and Indonesia is not based on any religion' (Salim, 2007).

The *Maklumat* drew an immediate response from the MUI. The Islamic daily *Republika* published an article by Kyai Ma'ruf Amin stating that Pancasila was not incompatible with religion; he added that the statement that religion should not dictate the truth was 'an attempt to disgrace religion and separate Pancasila from religion'. Later, a collective declaration by the MUI and other Muslim organisations emphasised their determination 'to guard and protect Pancasila from efforts to secularise it, … to cause Pancasila to clash with religion, and

to distance Pancasila from religion, particularly Islam' (Salim, 2007). This whole episode is clearly indicative of 'law as contested field' in which the tight contest has been between those wanting to create a balance among different religions in Indonesia and those wanting to reinforce the strong position of Islamic law in Indonesia's legal system.

The foregoing discussion demonstrated not only debates between different ideologies on the implementation of Islamic law in Indonesia's modern history, but also socio-legal reasoning developed by both contending camps from time to time. What is central in political and ideological debate on the implementation of Islamic law in Indonesia as described in this article is a conflict of argument on how to create justice for the whole Indonesian citizens regardless of their religious backgrounds. On the one hand, it is argued that justice must be upheld by paying a special attention to legal needs of Indonesian Muslim citizens, as they constitute the majority population of the country. On the other hand, however, it is contended that justice can be crafted only when freedom is completely offered and fulfilled. Only under free condition, non-discriminatory, equal and just state policies can be achieved and sustained.[]

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