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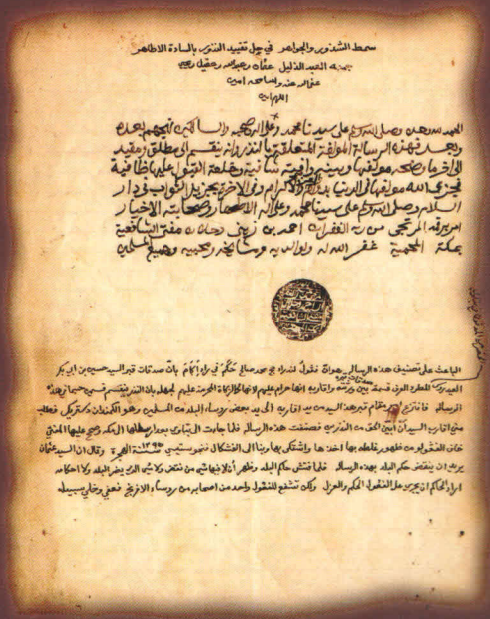

Center for Research and Development of Religious Literature and Heritage
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Front Cover: The image is fully adopted from the image in the article of *A Taqrīẓ for a Nineteenth Century Indonesian Manuscript*

The focus of this journal is to provide readers on understanding of Indonesia and International affairs related to religious literature and heritage and its present developments through publication of articles, research reports, and books reviews.

Heritage of Nusantara specializes in religious studies in the field of literature either contemporarily or classically and heritage located in Southeast Asia. This journal warmly welcomes contributions from scholars of related disciplines.

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THE APPLICATION OF ISLAMIC LAW IN INDONESIA: BETWEEN OPPORTUNITIES AND CHALLENGES

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Abstract

Essentially, the application of Islamic law in Indonesia has a huge opportunity. Undeniably, there remain challenges, both from within (Muslims) and from outside (other than Muslims). The great and tremendous challenges come from Muslims themselves. Muslims do not want Islamic law in Indonesia upright. The reason is the government is also unwilling because of the existing legal system and dissimilarity of attitude, understanding, practice of Muslims and Islamic leaders of Al-Quran and Al-Hadith, especially in relation to politics. It is likely to continue in line with the dynamics of Muslims in the state and nation. Pros and cons of Muslims against the application of Islamic law, including the unwillingness of groups against Islamic approach to structural (power) and Islamic cultural (culture), will raise the difficult and impossible application of Islamic law in Indonesia. Therefore, for most Muslims, the teachings should be reinterpreted beyond the textual meaning and application in real life.

Keywords: *Application, Islamic law, The Shari'a, Opportunities, Challenges, Politics, Indonesia*

Abstrak

Pada prinsipnya, penerapan hukum Islam di Indonesia memiliki peluang yang sangat besar. Tidak dapat dipungkiri, tantangan tetap ada, baik dari dalam (umat Islam) maupun dari luar (selain umat Islam). Namun justru tantangan yang besar dan dahsyat datang dari umat Islam itu sendiri. Umat Islam tidak menghendaki hukum Islam tegak di Indonesia. Hal ini disebabkan, selain pemerintah tidak menghendaki, karena sistem hukum yang ada, juga karena belum ada kesamaan sikap, pemahaman, pengamalan umat Islam dan para tokoh Islam terhadap al-Qur'an dan Al-Hadits, terutama dalam hubungannya dengan politik. Tampaknya akan terus berlangsung sejalan dengan dinamika kahidupan umat Islam dalam berbangsa dan bernegara. Pro dan kontra umat Islam terhadap penerapan syariat Islam, termasuk ada kelompok yang menghendaki pendekatan Islam struktural (kekuasaan) dan Islam kultural (budaya), akan semakin menambah sulit dan mustahil penerapan syariat Islam di Indonesia akan terwujud. Oleh karena itu, bagi sebagian kalangan muslim, ajaran-ajaran itu harus lebih ditafsirkan kembali melampaui makna tekstualnya dan aplikasinya dalam kehidupan nyata.

Kata kunci: *Penerapan, Hukum Islam, Syariat, Peluang, Tantangan, Politik, Indonesia*

Introduction

The process of Islamic law establishment in Indonesia occurred in the evolution of the crystallization process in the State Medina ummah (Azhary, 1992). For example, when Islam has not been perfected by Allah, the rules governing the society lowered incrementally, in a span of 22 years from 610 to 632, the year of the Prophet's death. This is an indicator that Islam will always keep abreast of times.

Historically, the application idea of Islamic law showed a transformative and remedial phenomenon though still visibly shades repetitive parallelism without any clarity. It is not a patchwork of ideas, but, like a snowball that keeps rolling and driving, it builds various construction types and new characters. (Fuad, 2005).

In a legal development, in 1975, Abdurrahman Wahid, introduced a notion of Islamic law as a supporting development, (see e.g. Wahid: 1975) which generally directs conversations on the roles and functions of Islamic law to support positive legal system development in Indonesia. Munawir Sadzali also floated the idea, Re-actualizing Islamic teachings. By taking issue discussion on inheritance law, slavery, and bank interest (see e.g. Sjadzali, 1997; 1975).

Here, in fact jurists (fuqaha / scholars) can be redefined as religion (Islamic law) so that they are able to adopt the culture of the community (socio-cultural) in accordance with the needs and realities. Thus, the attitude of ambiguity in religious practice does not happen again. For example, it is ironic that Muslims are keen worshippers, but their daily transactions through banks violate the provisions of the Qur'an and Hadith al (bank usury)[1] despite the pros and cons to the law on illicit bank interest.

Political Existence of Islamic Law

The teaching of Islam that regulates the way of life is called the law. In the science of usul fiqh, the law is defined as "Allah commands related to the actions of mukallaf[2] people, in the form of guidance to do something, which means the command must be done, or guidance to leave something, which means unlawful actions or prohibitions are done, or the provisions of law in the form of permissible things (facultative), which means that should be done and abandoned, and the provisions of the law that make two related things and one of them was the cause or condition or an obstacle to another (Zahrah, 1958).

Al-Jabri never said that Islamic culture is "*Fiqh* Culture". Putting this culture is very valuable,[3] so it will be similarly valid if we say that Greek culture is "the philosophy of culture" and Western culture is "the culture of science and technology". Existence as a knowledge system (Nizam al-Ma'rifi) and codification of religion are very sturdy and have been proven by history. Every Muslim who had studied and can read al-Qur'ân, will also undoubtedly read and store one or more of fiqh books . The views are parallel with many other thinkers, and show that jurisprudence is a dimension of the most well established religious teachings in some parts of Muslim communities everywhere. From here, the idea of legislating Islamic law through state institutions is considered, by some, as an important matter (Fuad, 2005).

Along with the establishment of Islamic kingdoms, power authority which has been run by the judiciary (*tahkim)* was removed and passed on to the court. It means that Islamic law could actually be enforced and is a further elaboration of clerical activities in providing religious services to the community (Arifin, 1996). From there, various institutions of Islamic courts come in several places, including; Porch court in Java, Sumatra Syar'iyah Court, and the density of the Qadi in

Banjar and Pontianak. These courts not only solve civil problems, but also to a certain extent hold criminal matters.

The phenomenon of Islamic law as the law of society's life, with the king (sultan) as the highest authority, has given rise to a theory of creed or confession of faith among Islamic law observers. The theory is actually a continuation of monotheism principles of in the philosophy of Islamic law. This requires the implementation of Islamic law by those who have vowed shahadah. It is consistent with the theory of Islamic legal authority, as conceived by HAR Gibb, that people who have accepted Islam as their religion means they have to accept the authority of Islamic law on themselves (Gibb, 1993). Islamic law in Indonesia existed. They have run with full awareness to adherence as a legal system, to reflect the acceptance of Islam as a religion they believed.

It could be said that the political position of Islamic law in the pre-independence, especially towards the end of the colonial period, in a position of uncertainty. Besides influenced by the interests of colonialism, the reason is no legal system in the region capable of accommodating the plurality of the existing law in society. The Islamic legal system in the archipelago is still fragmented, yet cohesive, and it turns out it is a legal system of relic old Islamic kingdoms in the archipelago, the formulation of which has not been well constructed.

In Islam there is no separation between religion and politics since both are organically related. The Qur'an, Hadith and Islamic history prove it. Religion and politics are intertwined, even interdependent. At the beginning of the Islamic presence, the first problem is political. Because without any political role, Islam will not be able to live. Islam must have a mechanism for smooth power of religious development. It can also prove that the development of a religion is very dependent on certain political conditions. If the political situation allows to launch a political religious maneuver[4], religions will likely grow, and vice versa (see e.g. Ali, 1984). Thus, the means of political Islam is politics based on[5] Sharia derived from the Qur'an and Sunnah.

Islam has laid a power system that is not a system of aristocracy and theocracy (Yamin, 1987). It is the power sought in Islam, instead of the expansion of personal or collective power. Islam puts power in active moral framework. Power is not a goal, but a means to serve the Almighty. Power is a tool to find a happy eternal life and a source of

mercy and justice for mankind. Thus, political Islam means setting, maintenance, and maintenance of public affairs with the order in accordance with Islam.

It is inevitable for Muslims, that Islam is a way of life which includes physical, political, and spiritual aspects. Sharia or Islamic way of life includes statutory legal, political, moral and religious ceremonies. Islamic law or jurisprudence is not limited to civil and criminal matters, but also political, economic, social, and national affairs, Islam does not separate religion from politics (Ahmad, 1988).

The most fundamental principle and foremost to be enforced in the basics of Islamic politics is related to the principles of Islam, namely the doctrine of *Tawhid* (monotheism), the most emphatic sense, monotheism is not only a theological principle, but also a major cornerstone in Islamic epistemology and the fundamental principle of the methodology of Islam study and all Muslims. In accordance with the principle of authority, sovereignty, decisions, power, and the right to give orders is solely owned by Allah Almighty. Qur'an declares it all as a basic postulate. Someone holding this belief to the bottom of their heart and soul, not only oral recognition, has found the truth and goodness of life, both in this world and in the hereafter. Thus, it should be a basic principle in the constitution of Islam in a state government.

Thus, basically the main principle in Islamic politics is against the unity of faith and power of the Almighty, and this is the foundation of social and moral system implanted by the Apostles, making sovereignty in the hands of a lawgiver.

Opportunities and Challenges

When the Republic of Indonesia would be proclaimed, a Preparatory Agency for Indonesia's Independence (BPUPKI) was established. In BPUPKI sessions to determine the basic state, members had different opinions in determining the basis of that State. Islamic parties propose this country to become an Islamic state and the nationalist party wanted separation of state affairs from religious affairs (Rasyid, 2006). Both of these proposals were similarly strong, but in the end, there was a compromise between the two parties where the four leaders of Islam succeeded in formulating the Jakarta Charter, which becomes the Preamble of the 1945 Constitution, and had been prepared by BPUPKI / PPKI. In the charter, five precepts become the basis of the

State, where the first principle is "Almighty God with the obligation to implement the Sharia to its adherents" (Rahardjo, 2003).

Tracing historical records existing in the post-independence period, the awareness of Muslims to implement Islamic law may be considered to increase. Their struggle over Islamic law did not stop at the level of recognition of Islamic law as the legal subsystem living in the community, but it reached a further level, namely the legalization and legislation. They want Islamic law to be part of the national legal system, not only the substance, but also in legal and positive terms. This phenomenon first appeared and coincided with the birth of the Jakarta Charter on June 22, 1945, in which the first principle reads: "Almighty God and Obligations to Perform Islamic Sharia for Their Adherents".

After Indonesia's proclamation on August 17, 1945, in the afternoon, a compromise formula was deleted at the session of the Preparatory Committee for Indonesia's Independence (PPKI), a day after the proclamation. The intellectual author of this elimination is M. Hatta himself. He claimed to be visited by one Japanese naval officer claiming to be a messenger of Christian groups from eastern Indonesia (Rasyid, 2006).

Struggle for Islamic law legislation slightly dimmed after August 18, 1945, a successful team of the Islamic groups was unable to maintain the last seven words from the bustle of the basic polarization state. With the loss of seven words, then it became very difficult for anyone to make Islamic law into positive law (Sharia) in the frame of the state constitution, including in this reform era.

Let us consider the historical development of the application of Islamic law in Indonesia from time to time:

1. The Period of Dutch Colonization

The history of Islamic law in the archipelagic area , according to some historians, began in the first century of Hijria, or the seventh and eighth century AD. As the gateway to the area of the country, the northern region of Sumatra island was then used as the starting point of the missionary movement of Muslim immigrants. Gradually, the missionary movement later formed the first Islamic community in Perlak, Aceh. The growing Muslim community in the region was followed by the establishment of the first Islamic kingdom in the homeland in the thirteenth century. The kingdom was known as

Samudera Pasai. It is located in the area of North Aceh (Hutabarat, 2005).

The influence of the rapid propagation of Islam spread to various parts of the archipelago and then caused some Islamic kingdoms to follow the establishment of the Kingdom stands Samudera Pasai in Aceh. Not far from Aceh, the Sultanate of Malacca was established; in Java, the Sultanate of Demak, Mataram and Cirebon were established; in Sulawesi and Maluku, Gowa Kingdom and the Sultanate of Ternate and Tidore were established.

The Sultanates recorded in history then set Islamic law as the applicable law. Establishment of Islamic law as the positive law in each of the sultanate certainly strengthens the practices grown that time in the Muslim community. These facts are evidenced by the *fiqh* literature written by scholars around the archipelago in the 16th and 17th century (Hutabarat, 2005; Effendy, 1998), and continued until Dutch traders came to the archipelago.

Islamic law in the Dutch occupation era in the archipelago begins with the presence of Dutch Commerce and Trade Organization in the East Indies, or known as VOC. As a trade organization, VOC had a role exceeding its function, which was possible because the Dutch government did make VOC as an arm in the East Indies. Therefore, in addition to running the trading function, VOC also represented the Netherlands in carrying out governmental functions by using the Dutch law they carried.

In fact, the use of Dutch law was found difficult because the native population must accept a law alien to them. As a result, VOC allowed the natives to carry out their customary law (Hutabarat, 2005). In relation to Islamic law, it may be noted that the following "compromise" was made by the VOC:

1) The Batavia Statute set in 1642 by the Company stated that the Islamic inheritance law applies to the followers of Islam;
2) An effort was made to the compilation of Islamic family law prevailing in the society. This effort was completed in 1760. This compilation was later known as the Compendium Freijer;
3) similar compilation efforts also existed in other areas, such as Semarang, Cirebon, Gowa, and Bone. In Semarang, for example, the result of the compilation was known as the Book of

the Law Mogharraer (of al-Muharrar). However, this compilation has advantages compared to Compendium Freijer, where he also includes the rules of Islamic criminal law (Hutabarat, 2005).

According to Masykuri Abdillah, teachings of Islam has been in fact largely practiced in personal, social and political life since the period of the Prophet until the arrival of the Western colonialist. Islamic law became a positive law in the sultanate and caliphate Islamic empire (Abdillah, 2000), like the kingdom of Mataram in the term of *natagama*. Arrival of Western colonialism to Muslim countries resulted in reduced existence of Islamic law among its adherents (Abdillah, 2000). That is why the Dutch government sought various ways to resolve the problem, including by:

1) spreading Christianity to the indigenous people; and
2) limiting the Islamic law only to the inner (spiritual) aspect (Hutabarat, 2005).

Political developments of Islamic law are very rapid, the Dutch government adviser who is also an expert of Islamic law, Christian Snouck (1857-1936) produced a policy that was essentially Islamic Policy, Islamic law should be kept away from the predominantly Muslim Indonesian society and indigenous peoples in order to draw closer to the tradition and culture of the Dutch colonial government and other Europeans (Kaban, 2007).

The policy was eventually broken down by Snouck Hurgronje be Receptie theory as stated in Article 134 paragraph 2 Indies Straaftregeling (IS), where Islamic law can only be accepted as a law, if it has been carried out by indigenous peoples. It means there is no Islamic law unless accepted as a customary law.

After this policy of Snouck Hurgronje, the colonial government enacted laws for the indigenous groups prioritizing a customary law. Therefore, studies of customary law was made by Dutch lawyers like Cornellis van Vollenhoven (1874-1933), with his Het adatrech van Nederlandsch-Indie (The Book of the Dutch East Indies Customary Law) containing customary traditions of 19 different areas, and traditional customs of immigrants such as Arabic, Chinese, Indian, and so forth.

In the further development, a theory essentially opposite to the theory of Snouck emerged, overriding Islamic law as the law of life. It is recognized and presented by Indonesian legal experts such as: Prof. Hazarin (1905-1975) and Suyuti Talib who basically argued that it was based on the true needs and legal consumption of Indonesian society with Muslim majority. However, the theory that puts indigenous Receptie is inverted / conflicting (Contratio) with the reality of life in the community.

The weak position of Islamic law continues to occur until near the end of the Dutch East Indies in Indonesia in 1942.

2. Japanese Occupation Period

After General Ter Poorten declared unconditional surrender to the Japanese military commander on March 8, 1942, the Japanese government immediately issued various regulations. One of them is Act No. 1 of 1942, which asserted that the Government of Japan continued all the powers previously held by the Governor General of the Dutch East Indies. The new statutes of course, has implications for the permanent position of the applicability of Islamic law as a last occupation of the Netherlands (Hutabarat, 2005). They are:

a) The promise of the Japanese military commander to protect and promote Islam as the religion of the majority population of Java island;
b) Establish Shumubu (Office of Religious Affairs), led by the Indonesian people themselves;
c) Allow the establishment of Islamic organizations, such as Muhammadiyah and NU;
d) Approve the establishment of the Consultative Council of the Muslim Indonesia (Masjumi) in October 1943 (Effendy, 1998); and
e) Approve the establishment of Hezbollah.

Thus, there was virtually no significant changes for the position of Islamic law during the Japanese occupation in the homeland. However, the Japanese occupation was better than the Dutch because leaders of Islam at this time had a new experience in regulating religious matters. Abikusno Tjokrosujoso stated that the Dutch government policy has weakened the position of Islam.[6]

When the Japanese troops arrived, they realized that Islam was a force in the Islamic Law in the Period of Independence (1945). Although the occupation of Japan provided many new experiences to Indonesian Muslim leaders, but in the end, along with the lack of strategic moves Japan won the war-which then made them open the way wide for the independence of Indonesia, Japan began to change its policy direction. They began to "glance" and give support to the Indonesian nationalist figures.

In this case, it seems the Japanese trust Indonesian nationalist groups to lead the future. Accordingly, it was not surprising that some state agencies and committees, such as the Advisory Council (Sanyo Kaigi) and BPUPKI (Dokuritsu Zyunbi Tyoosakai) were then handed over to the nationalist camp. Until May 1945, a committee was established consisting of 62 men, most of whom representing only 11 Islamic groups (see e.g. Effendy, 1998). On this basis, Ramly Hutabarat stated that BPUPKI "is not a body established on the basis of democratic elections, although Sukarno and Mohammad Hatta tried to keep it with fairly representative body members representing various groups in Indonesian society".[7]

Long debate about the basic state in BPUPKI then ends with the birth of what is called the Jakarta Charter. The most important sentence of the Jakarta Charter compromise mainly existed in the phrase "State of the obligation is based on the belief to enforce Sharia Law for its adherents". According to Muhammad Yamin this sentence made Indonesia independent not as a secular nor Islamic state (Effendy, 1998).

With such formulation, an implication rises that would require the establishment of legislation to implement Sharia for its adherents. However, the compromise formula of Jakarta Charter eventually failed to be ratified on August 18, 1945 by PPKI. There are a lot of fog with respect to the cause, but all versions lead to Mohammad Hatta, who expressed reservations on Christians in eastern Indonesia. Hatta said he got the information from a Japanese naval officer on the afternoon of August 17, 1945. However, Lt. Shegeta Nishijima -the only Japanese Navy officer who met Hatta at that moment denied that. He even said it was Latuharhary who objected it. The seriousness of the charges and unquestionableness given by Latuharhary and Maramis, a Christian

leader from Eastern Indonesia others, have approved the compromise formula in BPUPKI sessions (Effendy, 1998).

Struggle formalization of Islamic law did not stop there. Muslims continued to fight for the Constituent Assembly and culminated in 1959. The entire forum Islamic parties were actually fighting Islam as the state which means that the law applies not only to Muslims, but for all people of Indonesia. This struggle became foundered, as the voice of Islam as the basis for state support was still smaller than that rejection noise, although Muslims were referred to as the majority in Indonesia.

3. The Old Order Era

In the end, in this period, the status of Islamic law remains vague. Isa Anshary said, Genesis conspicuous history is perceived by Muslims as a 'hocus-pocus' and still a secret mist, a political siege to the ideals of Muslims.[8] Islamic law in the Revolution Period of Independence Period until issuance of the Presidential Decree on July 5, 1950. For almost five years after the proclamation of independence, Indonesia entered a revolution period (1945-1950).

But how is in the application level? Again, political factor is a major determinant in this regard. This conclusion embodiment is merely academic discourse if not supported by a strong and convincing political bargaining power. Another thing worth noting here is the uprising that some of them "nuanced" Islam in this phase. The most phenomenal is the movement of DI / TII pioneered by Kartosuwirjo of West Java.

Kartosuwirjo, in fact, has proclaimed his Islamic state on August 14, 1945, or two days before the proclamation of Indonesian independence on 17 August 1945. However, it releases its aspiration to later join the Republic of Indonesia.

Maybe it was not too wrong to say that the Old Order is the era of nationalists and communists. Meanwhile, Muslims in this era need to be slightly bent in the fight for ideals. Although Islamic law is one of the common reality that had been living in Indonesia, and on the basis of an opportunity to reposition the Islamic law as it should be, there is limited uncertainty "attention" that makes it increasingly blurred. And the role of Islamic law in the era did not get a proper place.

4. The New Order Era

Following the failure of PKI coup in 1965 and the reign of the New Order, many Indonesian Muslim leaders who had great hopes in their political efforts Islamic seated properly in the political order and law in Indonesia. What else then frees the former New Order of Masjumi figures previously were jailed by Sukarno. But soon, this Order confirms its role as the defender of Pancasila and the 1945 Constitution even in early 1967, Suharto asserted that the military will not approve the rehabilitation of Masjumi (Effendy, 1998). And what about the Islamic law?

Although the position of Islamic law as a source of national law was not so firm in the early days of this Order, efforts to reinforce it still continued. This is shown by K.H. Mohammad Dahlan, a minister of religion of NU, who is trying to put forward the Muslim draft legislation with the support of strong Islamic factions in the DPR-GR. Though unsuccessful, this effort was followed by proposing a bill governing formal legal institutions in Indonesia in 1970. This effort resulted in the birth of the then Law No.14 / 1970, which recognizes religious court as one of the judicial body orphaned at the Supreme Court. Through this Act, according to Islamic law Hazairin enacted directly as a stand law (Hutabarat, 2005).

Confirmation of the prevailing of Islamic law increasingly evident when Law no. 14 of 1989 sets religious courts (Hutabarat, 2005). This is then followed by intensive efforts to compile Islamic law in specific areas. This effort was successful when in February 1988, Suharto as the president accepted the compilation results, and dissemination of the Minister of Religious Affairs' instruction (Hutabarat, 2005).

According to Mohammad Natsir (See e.g. Ghazali, 1997), one form to accommodate the idea of Islamic law establishment was Religious Affairs of the Republic of Indonesia, meaning Muslims still continue to fight for the enactment of Islamic law for its adherents, through legislation in Parliament with the support of Islamic parties. Cooperation with the Ministry of Religious Affairs of Islamic parties and elements of Islamic sympathizers in secular parties such as Golkar has resulted in positive legal drafting to accommodate Islamic law, for example, as reflected in Law No. 14 of 1970 on the Judiciary, Law No. 1 of 1974 on Marriage, Law No. 7 1989 on Religious Courts, Law 38 of

1999 on Zakat management, and Law 17 of 1999 on Hajj Implementation.

The development of Islamic politics in the first decade of the new order is not profitable. The relationship between the state and Islam is full of tension. Any arrival of Islam is always responded with discrediting the government. As a result, the emerging Islamic fundamentalist groups who oppose almost all government policies. Impression that Islam was a traditionalist, anti-modernization, anti-development, and even anti-Pancasila has led to the marginalization of Muslims exposed in the modernization process and national development. The emergence of new thinking Islamic movement among Muslim intellectuals in the 1970s is one of the attitude that the existence of Muslims accounted for in the life of the nation.[9]

The idea of the new thinking of the earliest Islamic forms was when Nurcholis Madjid wrote his ideas in a paper entitled Necessity of Islamic Thought Reform and People Issue Integration. Proposed by Nurcholish core with respect to the condition of Muslims are less favorable impressions. Therefore, Muslims have less impression, the choice is between to update and to maintain a traditional attitude . Both have certain consequences. The first option seems to have the potential to cause people disunity, while the second option means extending intellectual stagnation situation of Muslims.

5. Reform Era

The fall of Suharto marks the emergence of reform. In the reform era under President B.J. Habibie and Wahid gives freedom to Muslims to openly express their aspirations, including the aspiration to fight for legislation of Islamic law as the national law or the implementation of Jakarta Charter (Abdillah, 2000).

At the Reform time, there has been a rise of political Islam, which is characterized by several symptoms. First, the birth of a number of Islamic parties, who claim to have Islam as a political ideology. Second, the birth of a number of radical fundamentalist organizations that are more focused and have resolute enforcement of Islamic Sharia with the method of jihad. Third, the demands of a number of regional or provincial plans, especially Darsussalam Nanggroe Aceh (NAD) and the district both in Java and outside Java, to implement Islamic Shari'a, through legislation in the area of regional autonomy.

The developments indicate that in addition to the failure to fight for the formalization of Sharia at the national level, a progress seems to emerge on the implementation of Islamic shariah, in the institutional, sector, and regional dimensions. In the reform period, a struggle to formalization of Islamic shariah has risen again, with the demands of a number of radical Islamic organizations and some political parties, particularly the United Development Party (PPP) and the Justice Party (PK) that the Annual Session in August 2002 restored the idea of Jakarta Charter, by amending article 29, paragraph 1 of the 1945 Constitution on the basis of the state, that Almighty God plus "by running the Sharia to its adherents." Unfortunately, the charge did not get adequate support from the Assembly members. Two largest Islamic organizations, Nahdlatul Ulama and Muhammadiyah, rejected the proposed amendment.

Lack of a common attitude among Muslim leaders, especially in relation to politics, is likely to continue in line with the dynamics of Muslim life in the state and nation. Therefore, for most Muslims, the teachings should be reinterpreted beyond the textual meaning and application in real life, such as:

a. Some Muslims believe that Islam should be the basis of the state, i.e. the Shari‘ah must be accepted as the constitution of the state; political sovereignty is in the hands of God; the idea of the nation-state is contrary to the concept of the *ummah* (Islamic community) that knows no political or regional boundaries recognizing the principle of *syūrā* (consultation) and the application of democracy principle of are different from the modern political discourse today. In other words, the context of the modern political system, with a number of newly independent Islamic state, has built their political base and is placed in a position contrary to the teachings of Islam;
b. Some other Muslims argue that Islam does not have a standard pattern of the theory of state (or political system) to be executed by the *ummah*. According to this school of thought, the term state (*dawlah*) cannot be found in the Qur'an that refer or as if refered to the political power and authority, but these expressions are merely incidental and have no bearing on political theory. Al-Qur'an for them is clearly not a book about politics.

In fact, with the birth of Decree No. III / MPR / 2000 on Law Resources and Sequence of legislation, there are more opportunities to produce regulations based on the Islamic law. Especially, Article 2, paragraph 7 confirms the accommodation of local regulations based on the specific conditions of an area in Indonesia and that it can override the regulatory effect of a general rule (Ashiddiqie, 2000).

Moreover, in addition to the more obvious opportunities, concrete efforts to realize the Islamic law in the form of laws and regulations have led to tangible results in this era. One proof is Law No. 32 of 2004 and the Qanun NAD Province on the Implementation of Shari'a No. 11 of 2002.

Thus, in this reform era, wider opportunities are open for Islamic law system to enrich the legal tradition in Indonesia. We can perform the update steps, and even the formation of a new law that is sourced and based on the Islamic legal system, adopted in line with the Quran and al-Sunnah, to be used as a positive legal norm in force in our national law.

Throughout the history of Indonesia's independence, it is no exaggeration to say in this reform era, vice Muslims gain a better position in the power stage. Muhammadiyah figures became chairman of the MPR. NU leaders became the MPR President. HMI became chairman of the House leaders. Throughout the history of law in Indonesia, an Islamic activist became the minister of justice only in this era. In fact, in the previous regimes, Islamic activists have only been in the position of the fringes, unstrategic often because of their active roles in Islamic activities, making them lose ground. Despite the sharp criticism directed at them, the opportunity to occupy strategic positions were certainly newly opened after the Reform era (Rasyid, 2006).

Actually, it depends on the leaders of the congregation to be able to take advantage of the position of Allah mandated to them, especially for designing the application of Sharia. By empowering Sharia scholars and legal scholars in various areas, it is highly possible to design a formulation of law having Sharia in their respective areas. At the very least, this great work was able to be repaid from now.

Concluding Remark

Aspirations of Muslims to implement Islamic law cannot be separated from the process of social and political transformation. There are two approaches: first, the context of the structural approach emphasizing the transformation of social and political order to influence the transformation of social behavior to become more Islamic. The second approach emphasizes cultural transformation in social behavior expected to affect social and political institutions to become Islamic. The interrelationship between the two is very close.

In contrast, the structural approach requires a political approach, in the form of political parties, lobbies or to disseminate Islamic ideas that can encourage public policy making products. Conversely, cultural retrofitting only requires socialization and internalization of Islam by Muslims without the direct support of political priorities. But, of course, there would be no certainty when Muslim aspirations will be realized.

Indeed the first thing to pay attention to is that the teaching Islam is, in fact, authoritarian for adherents. But Muslims only partially understand religious teachings, not comprehensively. Islam is not just introducing yourself as a spiritual system or on a vertical relationship with the Maker, like, worship *maḥḍah*.

Islam requires its teachings to be fully implemented resulting in a total change in people's lives; ranging from ideological, mindset, and lifestyle changes, up to the application of Islamic law as the legal aspect of Islam. It is the meaning conveyed in the verse of Al-Qur'ân, Q: S. 2: 208, “Enter ye Islam as a whole”. In view of Islam, human life is seen as a unified whole. There is no difference between prayer as worship *maḥḍah* and *muamalah* as worship ghairu maḥḍah, as the obligation to submit to the law. As is obligatory, we are praying.

Endnotes

[1] Most are not supposed to leave something provisions still quotes, because quotation marks indicate a vague (*syubhat*) to be shunned or abandoned.

[2] People with legal age is obliged to carry out the commandments of God.

[3] High quality, namely the values of high culture of art that should be maintained, See (*Kamus Besar Bahasa Indonesia*, 1989).

[4] The migration of Prophet Muhammad from Mecca to Medina is the first political maneuver. It is a city that allows potential development and religion.

[5] The term "*based on"*, implies interpretation of the texts of al-Qur'ân and as-Sunnah about the political principles in Islam. It is believed to belong to the principles as having been exemplified by the Prophet Muhammad, that Islam first appeared as a religion that is reflected on the doctrine of divinity and good life. Then it was formed region (state) as a means to provide protection to the people and increase the good life, and eventually become a culture that combines sublime civilization that has been produced for thousand years and eliminate other civilizations which is not in line with the framework of Islamic culture destination.

[6] Islam does not have employees trained in the field of religion in mosques or Islamic courts. Dutch run policies that weaken the position of Islam.

[7] This number based on what is written by Muhammad Yamin in the Manuscript Preparation Act of 1945, volumes I and II (Yamin, 1959: 60). Ramly Hutabarat mentioned the legal status of Islam, 85, it is also mentioned the number of Islamist is 15 people. This data is based on a speech in the Constituent Muzakkir Abdul Kahar, in On the State in the Constituent Assembly, (Muzakkir, 1959: 35).

[8] Minutes of negotiations in 1957, without spot, the Constituent Assembly of the Republic of Indonesia, without the year, 325, as quoted from (Bakhtiar Effendy, 1998).

[9] The term *new thinking* is to simplify the term *renewal thinking* and still an unclear terminology and much disputed. At the very least, a term that indicates the existence of different ideas with Muslim leaders before, such as M. Natsir, HM Rasyidi, and Deliar Noer. The new thinking is more empirical, but not apologetic in responding the idea of modernization of the New Order government. See (Fachry Ali, 1984: 122-123).

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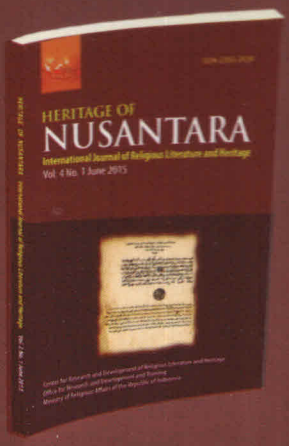

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