

## **PROSPECTIVE ISLAMIC LAW IN INDONESIA**

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### **ABSTRACT**

This paper discusses the Prospective Islamic law in Indonesia. The enforcement of Islamic law in Indonesia experienced the ups and downs, ranging from the colonial period with the Government of Indonesia to the Netherlands in order to reform it.

In this study it was found that a prospective law of Islam in Indonesia the development of any regime of the Government of Indonesia is experiencing developments. By the Government of Indonesia does not accept or reject the extremes, but instead selectively receive (not the totality) and gradual. Such a step is done for the sake of maintaining the stability and integrity of the country.

Keywords: Indonesia, Islamic Law Prospective,

### **INTRODUCTION**

Indonesia made The Pancasila as basic Countries and in its Constitution is not declared as the State religion and not also as a secular State. Indonesia is not a State religion because religious jurisprudence not being the main basis of law of Indonesia. There are also secular State because the State still has a contribution to the implementation of religious values. The legal concept of Pancasila between law values which are not separate elements of the Godhead and humanity.

Moreover, the establishment of national laws based on three legal system. That is the law custom, law ex West and Islamic law. The legal system of the third/became a source of national law. Because Islamic law is one of the sources of national law, would have to be a prospective value of-nailnya in the legislation. Even in the field of legislation mentioned, such as Islamic banking law, securities law, Sharia law, udnang zakat. However, in the process formed by the legislation if its substance much adopt the values of Islamic law, often occur a long debate, both in legislation and institutions among community leaders. This indicates that the Islamic law that fixed the access and the Government of Indonesia have an interest for it. As such, I need to know how the prospective Muslim law in the national legal system?

### **The position of Islamic law in national law**

The Government of Indonesia puts Islamic law as a source of national law in conjunction with the law of the former West and customary law. The third concept of the approach of this law have different character. Islamic law is predicated on the revelation of course Allah and his Messenger as a constituent. The placement of the Islamic law as sources of

national law of law approach. First, countries based on Pancasila and just Divine Almighty God as the first Animates others. Second, the Constitution of the United State the Republic of Indonesia in 1945 gave guarantees for religions to perform his religious teachings of history, the first approach is law the existence of at the same time the influx of Islam in Indonesia by kingdoms force it in total. Second, the colonial Government of Netherlands has enacted Islamic law is formally sociological approach of Islamic law is law that live in Islamic society, and residents of predominantly Muslim Indonesia.

The enforcement of Islamic law in the form of formal legal politics based on Netherlands colonial rule until the legal Government Indonesia experiencing political dynamics of ups and downs. The developments put the interests of Muslims Indonesia in accordance with condition and Government policy.

**a. Colonial Rule of The Colonial Government of Netherlands**

One of the Netherlands Indies Government policy is menyahuti thinking and implementation of Islamic law in Indonesia. Netherlands Indies Government formulate and menformulasikan the enforcement of Islamic law in the form of a regulation, include: (1) Staatsblat 1882 Number 152 that contains provisions for indigenous peoples or people's religious law applicable in colonies of the environment his life. So for Muslims applies Islamic law and religious courts were given authority to resolve things Muslims both in the field of civil law as well as in the field of criminal law. (2) Staatsblat 1882 number 2 is replaced with the Staatsbalat Number 1882 152 where the Court limited kewenagannya just completed the Religious matters in the field of the law of marriage. (3) Staatsblat 1937 # 116, laws of inheritance removed from the authority of religious Courts. Court of appeal established compensations in Java and Madura and Staatsblat 1937 # 610. and the religious Courts of South Kalimantan issued Staatsblat 1937 Number 638 and Staatsblat 1937 No. 639 of Density and density of Vast Kadi Kadi. Thus it is said that the Indian Government can Netherlands meberlakukan Islamic law muslim society formally Indonessia, although on late Government only impose Islamic marriage legal but religious courts increasingly have legitimacy with the creation of pegadilan appeal to Java and Madura and South Kalimantan.

**b. The Independence Of The Republic Of Indonesia**

The enforcement of Islamic law or the values of the Islamic law in the independence of the Republic of Indonesia vary according to the growth and dynamics of law in society and political life the law governing each period.

Attention of the Government of Indonesia per periodi by taking action against the values of the Islamic law as the law of national raw materials is done gradually, it is meant to happen syncretisation values of Islamic law with legal values that live in the community.

Penformalan of Islamic law from the period of the old order Government to governance reform in the period of progression, albeit not seginifikan. As seen from the following table :

Table 1. Islamic law in national law based on the period of reign of Indonesia

No.	The Period of Government	The field of	Muamala field	Jinayah field	The Amount
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		worship			of
1	Governance of the old order	0	4	0	4
2	The Government of the new order	1	5	0	6
3	The Government of Reform Era	2	5	0	7
	The Amount of	3	14	0	17

Source: legal materials 2012

The table shows the formal Islamic law in national law in the reign of old order, muamalah formalized field 4 (3) of the rules. At the time of the new order there are 6 (six) rule is composed of one (1) the rule of law in the areas of worship, and 5 (five) the rule of law to the field of muamalah. During the era of the Reformation there were 7 (seven) the rules, made up of areas of worship 2 (two) and rules for field muamalah 5 (five) rules. Four rules in the field of device muamalah during the old order, namely ACT Number 22Tahun 1946 about Marriage, divorce, and Cf., ACT 32 in 1954 about the determination of the enactment of ACT number 22 1946, in all regions outside of Java and Madura, the emergency ACT 1951 1Tahun Number of temporary measures to hold the unity of the composition, powers and functions of the civil tribunals and Court-PP Number 45 in 1954 about religious courts outside of Java and Madura. Five of the rules of Islamic law in national law at the time of the new order as mentioned governance is composed of one (1) the rules in the areas of worship, namely Presidential Decree Number 63 in 1983 about the Organization of Travel, and 5 ' Umrah device rules in the field of muamalah, namely ACT No. 1 of 1974, about marriage, ACT No. 7 of 1989 concerning religious courts, PP number 9 in 1975 on the implementation of ACT No. 1 of 1974 , PP Number 28 in 1977 about the Pewakafan Landholdings and presidential instruction No. 1 of 1991 concerning the compilation of the Islamic law. In the reign of the order of the reform there are 6 device consists of two rules rules about worship that is, ACT management of zakat, and ACT on the implementation of the pilgrimage, and 5 of the rules of the ACT, namely, muamalah endowments, the national Shariah-compliant Securities LAW, Banking LAW and Sharia religious courts ACT (Law No. 7 of 1989 juncto ACT number 3 of 2006 juncto ACT No. 50 of 2009).

#### 1) **The Governkance of the old order (1945-1966)**

Formalism Islamic law in national law in the reign of old order less attention. From a theological approach there are two reasons, first Country Indonesia is not a State of religion, by reason of the laws of the religion will not be a State law. Secondly because Indonesia is a community in a plural society then Islamic law may not be applied to adherents of different religions or beliefs of the adherents of Islam in Indonesia.

#### 2) **The reign of the new order regime (1966-1998)**

Formalism Islamic law in national law at the time of the new order has been getting chances. The Government of the new order by using an approach which puts the nation's ideology Pancasila as the sole basis for all political organizations and civic social organization

including the judiciary. New order Government position Islamic law as one of the sources of national law, resulted in movements against reinterpretation of Islamic legal values, especially values of Islamic law in the area of family law.

### 3) **During the rule of the order of the reform (1998-present)**

Formalism Islamic law in national law at the time of the order of the reform has got It's time, the reason the democratization, transparency and the rule of law gives it a chance to impose the values of Islamic law into national law. There are a bunch of Muslims want enforcement of Islamic jurisprudence. This is evident with several local regulations Shari'a of Islam local regulations by the Government of certain areas.

In Indonesia the Islamic law the formatting based on the reality of pluralism is always based on the purpose of national laws that protect all the people of Indonesia. There are adjustment movements and reinterpretation of Islamic law according to the social processes that occur in the community for the sake of accomplishing social change in Indonesia globally. Movement of the reinterpretation of Islamic law according to the process of social culture of Indonesia did not deviate from the maqasid al-Sharia (Islamic law). As for the essence of the concept of the purpose of Islamic law is to manifest the goodness at the same time avoid the ugliness/interesting benefits and refused to regard the three problems namely daruriyat, hajiyat, and tahsiniyat. The term commensurate with the core purpose of the Islamic law is a legal designation for masalah, in Islam should be geared towards masalah, which substantially was the creation of the benefit of the public (public interest) in people's lives. The benefit of the public that is dynamic and flexible, which along with its speed of development of the times. The values and objectives of Islamic law with public benefit considerations be an alternative solution to the complexity of the problems of human life.

### **Government's role with respect to the enforcement of Islamic law in Indonesia**

Government's role with respect to the enforcement of Islamic law can be classified in three major areas of Islamic law, the worship, and muamalah jinayah. Third field of the diresponi Islamic law differently by the Government. This can be seen in the following table:

Table 2: Responds The Government against the enactment of the law Islam di Indonesia

No.	The Islamic law imposed in Indonesia	Laws and regulations
1	Law of Worship	3
2	Law Muamalah	13
3	Jinay law	0
	The amount of	16

Source material primary law, 2012

The table illustrates that Government attention to the enforcement of Islamic law in the field of the law of legislation there are three worship, law legislation and regulations 13 muamalah law jinayah does not yet exist. The role of the Government to enforce Islamic law which touches directly the aspect of worship less than optimal. The optimal is not mean the country has no concern for the country, but instead have a larger importance. When countries

interfere with further aspects of worship, possibly causing instability. While the Government's role with respect to the enforcement of Islamic law in the area of direct intention to touch because muamalah life Indonesia. Islamic law in the area of crime while only as a legal nuance is in the middle of the community, but not yet a positive law.

Nevertheless, the Government has reformed the order sets out the regulations relating to the enforcement of Islamic Sharia law in the area of Nangroe Aceh. The policy granting special autonomy for Aceh as the province of Nangroe Aceh Darussalam by virtue of ACT No. 18 of 2001, which carries with it the authority to enforce Islamic Sharia law. The implementation of ACT No. 18 of 2001 are arranged with local regulations as qanun-qanun Nangroe Aceh Darasulam berhilwat criminal law, namely criminal, gambling, liquor and criminal.

The reason the Government not to make the Islamic criminal law into positive law applicable nationally because it were faced with a plurality of people in Indonesia with a variety of multi cultural refuge under principle Bhineka Tunggal Ika. In addition, the positism Islamic law in national law is determined by how large the Islamic community wants Indonesia to force it. Various government policy both the Central Government and local governments have established several areas of Islamic law into national law.

There are two fields associated with the Government's role in the enforcement of Islamic law. First, the field of Islamic law that does not require government intervention. This law requires individuals whose piety became the subject of legal and public relations of Muslims with the Government seen from its political aspect is very minimal. Second, the field of Islamic law related or require government intervention. Islamic law in this field are not only associated with individual piety, but has touched the interests of others. Therefore it must be carried out by the community through the power of the Government. Seen from the relationship between the subjects of the law with the interests of the State of the political aspects of the Government is very concerned. Therefore, the difference in the response of the Government related to the characteristics of Islamic law itself and dependencies with politics of the Government in the political dynamics of law law legislation. In addition, the positifisasi Islamic law in national law is determined by how large the Islamic community wants Indonesia to force it.

#### **a. The enforcement of Islamic law in the area of Worship**

In the context of Government policy towards legal worship can be distinguished into two forms. First, the policy against the substance of the legal service. Second, the Government's policy on the management of worship as part of the refinement of worship.

The first aspect of neutral Government and accommodating, because the Government does not intervene in areas which become individual Muslims Affairs Indonesia. Even encourage Islamic religious activities by treating Islam as a belief system rather than a political ideology of the system.

The second aspect of the Government's regulatory support for organizing and managing of worship by giving service for perfection of Government Participation in the implementation

and management of the manajemen worship because it is related to the interests of social rights.

#### **b. The enforcement of Islamic law in the area of muamalah**

Government policy in the field of muamalah can be seen in three aspects. First, the policy against the Islamic law that is directly used the term part of Sharia both in terms of product name and its substance. Such as ACT number 19 of 2008 and ACT Number 21 of 2008. Second, the policy against Islamic law in terms of the term doesn't look right, but the substance is in the Sharia. such as ACT No. 1 of 1974, Third, policies against social activities society Muslims. Such as ACT No. 23 of 2011 jonto ACT No. 38 of 1999 regarding management of Zakat and ACT No. 41 of 2004 concerning the endowments.

The existence of a rule of community social legislation and the activities of Muslims in the field of implementation, strengthening muamalah Islamic teachings and would reinforce the existence of religious courts.

#### **c. The enforcement of Islamic law in the area of jinayah (Muslim PANA)**

The Government addressing the various thoughts about the enforcement of Islamic criminal law with different variations. There are two views on this. First, because criminal law is a public law then keberlakuannya can not only to ethnic, religious and/or specific community. Second, in a country of only one legal system, if there is another system of law should be in accordance with the ideals of the in Nations.

In this case there are three factors that cause no terakomodasi Islamic criminal law criminal law in Indonesia. First, political factors, the law does not give a chance to the inclusion of the values of the Islamic law in the criminal law system in Indonesia. In this legal and political factors the Government is influenced by the views of one legal entity take shelter under principle Bhineka Tunggal Ika. The second factor is the misunderstanding in understanding of Islam due to fear of excessive especially for non-muslim communities and most Muslims themselves. Third, factors of low awareness of law society about the need to establish Indonesia's criminal law really stems from the law of life amidst society.

#### **Government policy toward regulation of PA**

The existence of the religious courts in Indonesia from both the aspect of history or from the aspect of Constitution has a strong foundation and still exist, although in the process having uncertain conditions. Since the Netherlands colonial rule until the beginning of the new order Government, religious courts have the dynamics of a tidal rise and ebb tricky, either status, position, as well as its being the cause of terpuruknya. the existence of the religious courts. As by Andi Syamsul Alam that the deterioration of religious courts due to the policy of the colonial Government by reducing its Netherlands, does not provide facilities for the religious courts, as the judge had not been given a salary and do not have the Office building. The State lasted until the valid ACT No. 1 of 1974. This fact can not be separated from the political will (Government policy).

However, development of the period to the period of reign of experienced development in accordance with the dynamics of political Government and the desire of every period. This can be illustrated in the following table:

Table 3 Legislation regulating the powers of the judiciary each period's religious Government in Indonesia

No.	Government Period	Laws and regulations
1	The Government order of Lam	PP Number 54 in 1957
2	The Government of the new order	Act No. 14 of 1970, ACT No. 1 Tahun of 1974, Act No. 7 of 1989. GR No. 9 in 1975.
3	Reign Of The Reform Era	Law No. 41 of 2004, law No. 3 of 2006, Act No. 50 of 2009, law No. 21 of 2008

Source material primary law, 2012

From these tables show that the judicial development of the religion in the reign of the old order are (1) one PP on the commemoration and religious courts authority, outside of Java and Madura and most of South Kalimantan. In the reign of the new order there are 4 legislation that regulates the existence of judicial power in the system of Justice, religion and the scope of those powers. In the reign of the order there are 4 reform legislation regulating the judicial authorities of the religion.

During the reign of the old Order, the willingness of Muslim societies, not just want to mempositifkan the Islamic jurisprudence, but more than that, namely the Islamic jurisprudence was used as the basis of the State. Such willingness appears to get no respect, because not yet is something urgent, not even the needs in the perspective of building unity in unity. Even becoming a threat to the nation's integration.

At the beginning of the new order Government, in the name of political stability and security, avoiding the occurrence of people, groups, organizations, and even a political party become the locomotive in fight for Islamic jurisprudence mission gets no space, even he is not powerless. Nevertheless, in the final moments of the powers of the new order, there is a relationship of harmony between Muslims and the Government showed a response, appreciation and even a pretty positive the Government alignments for Muslims with the advent of some of the legislation, one of which is Act No. 7 of 1989 of the religious courts. With the spirit of the reforms, especially the rule of law enforcement take the resolve of the Government to make changes to the legislation in the field of Justice, including the ACT of religious courts.

Changes to the religious courts ACT institutionally the existence of religious courts having authority put on trial because of a strengthening expansion. The expansion of this power will bring religious courts into a higher caste as the media to defend the existence of the institution The stronger the religious courts of its existence with the application one roof system (one-stop system), by providing a great opportunity for the development of the potential of religious courts and implementing the values of Islamic law into positive law.

## CONCLUSION

Political law legal developments the Government against increasingly strong desire for facilitate Islamic law in national law the Government did not accept or reject the extremes, but instead selectively receive (not the totality), gradually phase by phase. This is done on the basis of maintaining the stability and integrity of the country, for the benefit of the public.

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