AL RISALAH: Jurnal Ilmu Syariah dan Hukum

VOLUME 22 NO 1, MEI 2022
P-ISSN: 2252-8334 / E-ISSN: 2550-0309
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DOI: https://doi.org/10.24252/al-risalah.vi.28369

ISLAMIC LAW LEGISLATION IN AN EFFORT TO REFORM INDONESIA'S NATIONAL LAW

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ARTICLE HISTORY
Received: 05 April 2022
Accepted: 11 May 2022
Published: 30 May 2022

Abstract
The implementation of Islamic law in Indonesia is still in a phase of gaps and contradictions. In line with developing a national legal system, it is expected to uphold the rule of law based on justice and truth from prevailing values, culture, and community beliefs. In order to answer the related issues, this study applied a library research model based on relevant library materials in the form of books, journals, or related articles. The results of this study showed that the position of Islamic law in the legal system in Indonesia was equal to Western law and customary law as a source of national law formation. Islamic law as a legal order guided by the majority of the Indonesian Muslim society had lived and existed in the legal system of state administration through sharia-based legislation (Islamic law). However, it was undeniable that the implementation of Islamic law and the presence of sharia-based laws experienced a dilemma internally and externally, influenced by epistemological, methodological, and socio-cultural aspects of politics. In addition, the efforts to develop and foster national law integrated a legal system that was harmoniously structured and followed the needs and developments of community culture. Moreover, it provided a great opportunity to consciously place Islamic law into a complete source of national law shaded by The Five Principles and the 1945 Constitution without causing contradictory and problematic assumptions by relying on the principles of forming the people in perfect and unanimous unity. Finally, it took the middle way, could develop and move, had the life force in forming itself according to the development and or progress of the times.

Keywords: Legislation; Islamic Law; National Law Reform

INTRODUCTION

Indonesia is the most populous Muslim country globally, which does not declare itself as an Islamic country. During the life of the Muslim majority, all social, national, and state issues are not based on a religious or Islamic understanding. This means that the state ideology and the nation's way of life are derived from several basic values explored in Indonesia as a meeting point for the state's vision. Discussing Islamic law in a legal state order (*rechstaat*) based on The Five Principles results from the existence and development of the Indonesian Muslim society. Since the beginning of the presence of Islam in the seventh century AD until now, it has influenced the socio-cultural community and even extends to the national legal system. In a different context, the rule of law in Indonesia adopts the flow of juridical positivism, which requires that what can be accepted as the law is only what has been positively determined by the state.[1] Of course, it is simplistically assumed that the enforcement of Islamic laws in the territory of The Five Principles state is experiencing tension and bargaining of power, which is quite tough both on the components of the nation and with state power.

In essence, the sociological aspect of law reflects the values of an institution of life believed by the community. Thus, the law can be used to reference community reform in anticipating economic, political, social, and cultural developments. Law is not static, not only prioritizing order and certainty but must engineer and dynamize people's thoughts and behavior to achieve their goals. In other languages, the existence of law is not free of interest, value, and power, which is always fulfilled by certain values and the accumulation and formulation of these values. Law reform in the perspective of law formation must focus on two dimensions, namely the dimensions of the legal system covering legal materials, facilities and infrastructure, legal institutions, legal management, and human resources in the field of law. Moreover, the cultural dimension of legal culture is related to the legal cultures of state administration, especially law enforcement and society.

The concept of law reform-oriented towards material and formal development of Islamic law is very open. As referred to in efforts to reform the law that greatly anticipates the community's social life and for legal certainty and legal force, it is legally positive in protecting the Muslim society in Indonesia. However, the role of law referred to above as a tool of social engineering when viewed from reality is like a double-edged knife. On the one hand, the law helps the facilitative laws or as an agent of social change, and on the other hand, it is repressive laws.

Generally, the Indonesian government and people still do not agree with implementing Islamic law. This is evidenced by the freezing, cancellation, and rejection of laws and regulations based on Islamic law in Indonesia. So far, the presence of Islamic law in Indonesia has only been used in the field of *ahwal syakhsiyah* (family law), which is dominated by marriage, waqf, inheritance, and sharia economics law. This issue is born inseparable from the content of Islamic law, which is formed and based on Middle

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[1]M W Rumadi, *Fiqh Madzhab Negara ; Kritik Atas Politik Hukum Islam Di Indonesia* (Yogyakarta: LKIS, Yogyakarta, 2001). h. 2.

Eastern social institutions through the revelation of Allah SWT and the words of the Prophet Muhammad. Thus, some people do not feel that it is not in accordance with the sense of legal awareness to practice and develop Islamic law with a sense of legal awareness of the people who have been institutionalized in their tradition, customs, and concordance principle.[2] The reality of this statement is inversely proportional to the fact that there are so many Islamic cultures integrated with the local culture of the archipelago. Therefore, it is possible and a necessity that Islamic law can be developed and enforced through an Indonesian style.

Based on this description above, Islamic law is seen as having the potential to have codification and unification in the life of national law. Not only to make Islam the basis of the state to form a nation-state, but also to protect the Muslim society from being based on Islamic law while still accepting The Five Principles as the state ideology and the source of all sources of law. Also, able to provide perceptions of integration and guidelines for the plurality of the nation.

METHOD

This study employed normative research with library study. A literature study was carried out based on relevant library materials in the form of books, journals, articles, and other coverage reviewed descriptively. This descriptive study aimed to describe the position of Islamic law in reality in Indonesia as a legal instrument that applied from various spaces and dynamics. Thus, this research study used a normative juridical approach.

RESULT AND DISCUSSION

1. Islamic Law Legislation in the Legal System in Indonesia

According to Article 2 of Law No. 12 of 2011, The Five Principles is the source of all sources of state law, which ranks highest at the top of the pyramid of legal norms, followed by the 1945 Constitution, Laws/Government Regulation in Lie of Law (*Formell Gesetz*), as well as implementing regulations and autonomous regulations (*Verordnung und Autonomie satzung*) which begin from government regulations, presidential regulations and regional regulations at the provincial, district/city levels.[3] The hierarchy of laws and regulations as adopted in Indonesia is the legal norm that regulates the life of the nation and state, considering that Indonesia is a legal state which is legitimized in Article 1 paragraph 3 of the 1945 Constitution. Many Islamic law materials are formed by state institutions or authorized officials and dominated in the form of laws, government regulations to regional regulations. The institutionalization of Islamic law in Indonesia is

[2]A M Bagus Amirullah, *Pluralitas Budaya Di Indonesia Dan Korelasinya Dengan Status Hukum Islam Dalam Tata Hukum Positif Di Indonesia* (Yogyakarta: Lima Aksara, 2020). h. 2.
[3]Sirajuddin dan Winardi, *Dasar-Dasar Hukum Tata Negara Indonesia* (Malang: Setara Press, 2015). h. 12.

inseparable from the history of the existence of Islamic law, which has existed among the people long before the arrival of the Dutch.

Historically, after the Dutch government-controlled Indonesia, the Religious Courts that had existed in Java since the 16th century held by the Muslim leader (*penghulu*) were under the supervision of the Dutch courts, namely the district courts (*landraad*). As a result, all religious court decisions cannot be implemented without the approval of the head of the *landraad*. In addition, the Dutch government also limited the competence of religious courts through Stbl. 1937 No. 116 was limited to the field of kinship, for example, disputes between husband and wife who were Muslim and cases related to marriage to divorce. However, cases related to grants, waqf, inheritance, and wills were transferred to the competence of the district court even though such cases have been under the authority of the Religious Courts since 1882. Furthermore, during the Japanese occupation, the position of Islamic law did not change.[4]

In the early days of independence, Islamic law was again placed in its original position, which was trying to exist in the archipelago by Muslim leaders at that time. On August 19, 1945, Preparatory Committee for Indonesian Independence (Indonesian: *Panitia Persiapan Kemerdekaan Indonesia,* PPKI) held its first meeting in Jakarta. The meeting discussed the draft constitution, which had been agreed upon by the Investigating Committee for Preparatory Work for Independence (Indonesian: *Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia*, BPUPKI). One of the topics discussed in depth was related to the Jakarta Charter on the precepts of Belief in the one and only God, "With the obligation to carry out Islamic law for its adherents." This discussion experienced quite a tough debate due to the desire as Muslim leaders, especially the Preparatory Committee for Indonesian Independence members, to maintain the contents of the Jakarta Charter in its entirety, while other parties wanted the seven words not to be included. However, in the end, the seven words were agreed not to be included in the preamble to the 1945 Constitution.[5] However, the debate took place again in 1959 with the same theme, namely the implementation of sharia (Islamic law). However, the debate spontaneously quelled when the decree of President Soekarno on July 5, 1959, stated that the Jakarta Charter had imbued the 1945 Constitution, including its torso.

The emergence of Law No. 1 of 1974 concerning Marriage is an effort to develop Islamic law through codification and national legislation. Then followed by Law No. 7 of 1989 concerning the Religious Courts, which is based on Law No. 14 of 1970 concerning the Principles of Judicial Power and contains four courts in Indonesia, including the General Courts, Military Courts, Religious Courts, and State Administrative Courts. Islamic law has contributed to the legal system in Indonesia, at least strengthened by the birth of various laws, including Law No. 17 of 1999 concerning the Organization of the

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[4]Dahlia Haliah Ma'u, "Eksistensi Hukum Islam Di Indonesia (Analisis Kontribusi Dan Pembaruan Hukum Islam Pra Dan Pasca Kemerdekaan Republik Indonesia)," *Jurnal Ilmiah Al-Syir'ah* 15, no. 1 (2018): 14–30, http://dx.doi.org/10.30984/as.v15i1.471.

[5]S Martosoewignyo, *Hukum Tata Negara Indonesia: Pemikiran Dan Pandangan* (Bandung: PT Remaja Rosdakarya, 2014). h. 110

Hajj, Law No. 36 of 1999 concerning Management of Zakat, Law No. 41 of 2004 concerning Waqf, Law No. 44 of 1999 concerning the Implementation of the Specialties of Aceh as well as Law No. 18 of 2001 concerning the Special Autonomy for Aceh Province in the enforcement of Islamic law, Law No. 21 of 2008 concerning Islamic Banking, Law No. 19 of 2008 concerning Government Sharia Securities (Indonesian: *Surat Berharga Syariah Negara*, SBSN), Supreme Court Regulation No. 2 of 2008 concerning the Sharia Economic Law Compilation, Presidential Instruction No. 1 of 1991 concerning the Islamic Law Compilation and others.[6]

The embodiment of legislation based on Islamic law (sharia) has developed in Indonesia, not only in the form of laws but also in regional regulations. The number of regional regulations with the nuances of Islamic law (sharia) in various provinces or districts/cities is initiated by the autonomous concept of religious norms that live in society or the reduction of Islamic teachings such as compulsory reading and writing of the Al-Quran, management of zakat, prohibition of prostitution, gambling and so on.[7] The authority of the regional government to form Regional Regulations as stated in Article 18 paragraph 6 of the 1945 Constitution, which is further regulated by organic laws, namely Articles 20-23 of Law No. 23 of 2014 on the Amendment to Law No. 32 of 2004 concerning Regional Government.

The current Sharia regulations have been implemented in at least 24 provinces or 72.72% in Indonesia, starting from 1999-2009[8] with different enforcement patterns. The special autonomy of the Province of Nanggroe Aceh Darussalam (NAD) asserts itself as a special region through implementing and enforcing Islamic law mandated by TAP No. IV/MPR/1999, which was followed by Law No. 11 of 2006 concerning the Government of Aceh on Amendments to Law No. 18 of 2001 concerning the Special Autonomy of NAD.[9] Sharia-based laws and regulations (Islamic law), when linked to religion and the state from the perspective of The Five Principles and the 1945 Constitution, cannot be used as a complete and perfect juridical basis.[10] However, it has provided a place for the position of Islamic law, at least in the effort to form national legislation and a source for the formation of national law other than customary law and Western law.

Moreover, the emergence of the theory of existence as a continuation of the *receptie exit* theory and the *receptio a contrario* theory explains the existence of Islamic law in

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[6]Mardani, *Hukum Islam: Kumpulan Peraturan Tentang Hukum Islam Di Indonesia* (Jakarta: Prenada Media, 2017). h. 16.

[7]M Jeffri Arlinandes Chandra, "Peraturan Daerah (PERDA) Syari'ah Dan Perda Bernuansa Syari'ah Dalam Konteks Ketatanegaraan Di Indonesia," *AL Imarah: Jurnal Pemerintahan Dan Politik Islam* 3, no. 1 (2018): 60–80.

[8]Nina Adriana dan Syafuan Rozi, *Perda Syariah di Indonesia; Antara Kearifan Lokal, Politik Elektoral dan Potensi Ancaman terhadap Kebinekaan*, http://lipi.go.id/publikasi/perda-syariah-di-Indonesia-antara-kearifan-lokal-politik-elektoral-dan-potensi-ancaman-terhadap-kebhinekaan/29537, Diakses 11 Januari 2021.

[9]Emy Hajar Abra, "Kontroversi Legalitas Dan Penerapan Perda Syariah Dalam Sistem Hukum Indonesia," *Jurnal Dimensi* 3, no. 3 (2014): 1–6.

[10]Hayatun Na'imah and Bahjatul Mardhiah, "Perda Berbasis Syari'ah Dan Hubungan Negara-Agama Dalam Perspektif Pancasila," *Mazahib Jurnal Pemikiran Hukum Islam* 15, no. 2 (2016): 168–81.

national law in several meanings; 1) In Islamic law meaning, it is in national law as an integral part of it; 2) In independence meaning, it is recognized as having the force of national law; 3) In Islamic law meaning, it functions as a filter for Indonesian National law materials; and 4) In the main material and main element meaning of national law. Therefore, the existence theory asserts that the existence of Islamic law in the legal system in Indonesia is an undeniable fact.[11]

2. The Problems of Islamic Law Legislation on the State Administration Formulation

The practice of state administration in Indonesia shows that three things greatly affect the existence of Islamic law, including; 1) the state of transition from the colonial period to the independence period cannot be avoided; 2) the law is used only to confirm something that already exists and is considered good. It is clear that the priority of order and certainty, not the development and possibility of following the development of society; 3) Law is the result of engineering social forces in society or law as a tool of social engineering.[12] Thus, in general, the constraints and problems of Islamic law in Indonesia cannot be separated from the plurality of the nation, which must be accepted in a very broad socio-cultural and regional condition. Not to mention the method of legal education that is too dichotomy of Western law, Islamic law, and customary law. This results in a lack of academic studies in Islamic law with other in-depth legal studies. In essence, the Western legal system, Islamic law, and customary law contradict each other even though they have the same community orientation.

Systematically, the problems of implementing Islamic law in Indonesia consist of 3 main problems in the form of conflicting understandings and the reality of society. 1) Epistemological problems; three views of knowledge cover the view that Islamic law has not yet been recognized for its existence in the legal system in Indonesia. Also, the idea is to continue to recognize and enforce the rules of Islamic law (*fiqh*) legally according to religion, even though they deviate from the provisions of state regulations and the view that considers laws relating to Islamic law as state laws that are legitimate to regulate Muslims and constitute Indonesian fiqh. 2) Methodological problems; for those who think that Islamic law only comes from God's revelation by looking at the source of the law, namely texts. Also, the method of finding the law tends to be linguistic and textual. Meanwhile, other groups believe that Islamic law also comes from reason. Thus, it is not enough to look at the texts textually but develop interpretation models other than linguistic methods. 3) Political, social and cultural problems; the formalization or application of Islamic law through weak political power as well as the polarization of aspirations of Islamic political parties in the application of Islamic law to competition between political sects, especially nationalist and Islamist groups, the attitude of some people who are intolerant of accepting Islamic law and national cultural pluralism.[13]

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[11]Mardani, *Hukum Islam: Kumpulan Peraturan Tentang Hukum Islam Di Indonesia*. h. 8.

[12]A Achmad and B Arifin, *Dimensi Hukum Islam Dalam Sistem Hukum Nasional: Mengenang 65 Th. Prof. Dr. Busthanul Arifin, SH.* (Jakarta: Gema Insani Press, 1996). h. 174

[13]Sri Wahyuni, *Politik Hukum Islam Pasca Orde Baru* (Yogyakarta: Gapura Publishing.com, 2014). h. 167-168.

The efforts to actualize Islamic law from the aspect of internalizing Muslims are also experiencing problems. Although Islamic law is a teaching that must be carried out by Muslims themselves, it is not yet fully ready to be implemented even though it is God's command. The rules of Islamic law concerning public law, such as criminal law, are still far from being operational because the tools of coercion, suppression, and enforcement in Indonesia as determined by Allah SWT are not used or recognized by state legality but use the material and formal rules of the Criminal Code and Code of Criminal Procedure.[14]

The phenomenon of criminal law (*jinayah*) that has not been touched is due to the assessment of Muslims and non-Muslims on cruel and inhumane legal sanctions. Basically, the assessment of witnesses of Islamic criminal law in the form of *qishash, hadd*, cutting off hands, whipping, and stoning is mostly understood as a text (specifically). It creates a sense of fear and anxiety in the context of its application. However, the efforts to enforce sharia, in this case, Islamic law or *jinayah* law, are not limited to specific understandings without using the term sharia in a broad sense.[15] Furthermore, the essence of Islamic law on witnesses or the death penalty for perpetrators of *qishash* or cutting off hands for thieves lies in welfare, justice, and peace which will then be discussed as lessons and the substance of the punishment imposed. For example, in the *qishah* case, Islamic law provides an alternative to the death penalty. It may also be released on the condition that a fine (*diat*) is paid after being forgiven by the victim's family. In the legal sanction of cutting off hands, the same concept as an alternative punishment in the form of exile or exile (*yunfaw min al-ard*) in Surah Al-Maidah 5:33, such as the realization of peace. This means that the Muslim society in Indonesia is still unable to understand the substance of the enforcement of Islamic law.

In addition, the emergence of Islamic Law Compilation as a legal unification initiated in 1985 contains a collection of laws. Article by Article legitimized through Presidential Instruction No. 1 of 1991 has not fully answered the challenges that exist in the religious courts. Inconsistency is a basic problem in the substance of the Islamic Law Compilation Article. Polygamy is allowed when it fulfills the four conditions in the Article. However, another verse states that Islamic marriage is the principle of monogamy.[16] In addition, there are different views regarding the practical difficulties of Islamic law within the limits of the results of the previous *mujtahids' ijtihad* because, first, science and society have changed a lot. Second, the nature and form of countries today are essentially multi-rational and multi-religious national states. These two things make it difficult to obtain Islamic legal certainty because the results of the *ijtihad* of the previous *mujtahids* were produced in a different environment when the level of science was not yet up to par today.[17] Therefore, the normative substance of Islamic law in the

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[14]Muhammadong Muhammadong, "Dinamika Pembaharuan Hukum Islam Di Indonesia Dan Tantangannya," *Sulesana: Jurnal Wawasan Keislaman* 8, no. 2 (2013): 79–92.

[15]Hamka Haq, *Syariat Islam Wacana Dan Penerapannya* (Ujung Pandang: Yayasan Al-Ahkam, 2001). h. 5.

[16]Bagus Amirullah, *Pluralitas Budaya Di Indonesia Dan Korelasinya Dengan Status Hukum Islam Dalam Tata Hukum Positif Di Indonesia*. h. 3.

[17]Bustanul Arifin, *Pelembagaan Hukum Islam Di Indonesia; Akar Sejarah, Hambatan Dan Prospeknya*, Cet. I (Jakarta: Gema Insani Press, 1996). h. 54.

legal system tends to be perched on both internal and external social problems. This is because of the weak coercion of the implementation of Islamic law so that it is unavoidable to avoid a gap with the legal needs of the community. Or it is still a predictive assumption that the implementation of the field of Islamic law is still waiting for a balanced situation.

3. The Prospects of Islamic Law Legislation in the Dimension of National Law Reform.

Belief in the one and only God is a noble value that underlies spiritual, ethical, and moral principles as the basic framework in developing national law. This value is an inspiration and effort to practice The Five Principles in every effort to form legislation. Philosophically, Belief in the one and only God is interpreted as a way of faith and piety to God, thereby showing the inseparable link between Islamic teachings and state philosophy on the formation, development, and national law reform. In line with that, there are interpretations related to Islamic law from the contents of the Articles of the 1945 Constitution. First, the broad interpretation of Article 29 paragraph 2[18] places Islamic law as religious teaching. This interpretation brings Islamic law to be realized in the social life on the impression that there is an obligation to apply Islamic law immediately without coercion. Second, organic interpretation of Article 24 paragraph 2[19] places Islamic law as something that must be defended before or outside the court and involved in the implementation of the judiciary.[20] By looking at the above argument, Islamic law already has juridical recognition. This recognition can be seen in the form of laws and regulations that have implications for legal, cultural, social, and political institutions.

Meanwhile, theoretically, the function of legislation internally is divided into creation, reform, integration of pluralism, and legal certainty functions. It is different from the external function of laws and regulations oriented towards change, stability, and convenience. Conceptually, laws and regulations are written regulations formed by authorized state officials or institutions through established procedures and are generally applicable and generally binding.[21] In this regard, an effective instrument in law reform is the formation of laws and regulations. The formation of laws and regulations can be planned. It means that law reform can also be planned. In addition, the area of statutory regulations is not limited to carrying out the function of updating existing regulations

[18]Lihat UUD Negara Republik Indonesia Tahun 1945 "Negara menjamin kemerdekaan tiap-tiap penduduk untuk memeluk agamanya masing-masing dan untuk beribadat menurut agamanya dan kepercayaannya itu.", (Jakarta: Sekretaris Jenderal MPR RI, 2017), h.147

[19]Lihat UUD Negara Republik Indonesia Tahun 1945 "Kekuasaan kehakiman dilakukan oleh sebuah Mahkamah Agung dan badan peradilan yang berada di bawahnya dalam lingkungan peradilan umum, lingkungan peradilan agama, lingkungan peradilan militer, lingkungan peradilan tata usaha negara, dan oleh sebuah Mahkamah Konstitusi", (Jakarta: Sekretaris Jenderal MPR RI, 2017), h.147

[20]A G Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta: Gema Insani Press, 1994). h. 20.

[21]Jumadi, *Dasar Dan Teknik Pembentukan Peraturan PerUndang-Undangan* (Jakarta: PT Rajawali Grafindo, 2017). h. 2.

but can also be used as a means of updating customary, tradition, and jurisprudential laws. Furthermore, Indonesia has four legal systems: the national legal system, Continental European legal system, religious legal system, and customary legal system. Legal pluralism in Indonesia is a legacy that needs to be reorganized. Restructuring is intended as a step to develop national law by integrating a legal system that is harmoniously structured and follows the needs and developments of community culture.[22] Therefore, constitutionally, Islamic law has great space and opportunity to be transformed and applied in Indonesia, especially in the form of legislation.

In Moh. Mahfud MD's dissertation entitled "The Development of Legal Politics: A Study of the Effect of Political Configuration on Legal Products in Indonesia," stated that the character of a legal product is always determined and influenced by the political configuration that gives birth to it. It means that certain political configurations of rulers or government domination groups always give birth to characters or models of legal products in accordance with their political vision. The theory provides an answer to the existence of law as a political product or political legitimacy. Substantively, when it comes to Islamic law, it includes Law No. 1 of 1974, Law No. 7 of 1989, and so on. Within certain limits, Islamic law can be a political product whose legitimacy becomes necessary in legal certainty and a positive legal force for the Indonesian Muslim society. However, in the perspective of the dimensions of Islamic teachings come from Allah SWT and sourced from the Al-Quran and As-Sunnah. It is clear that Islamic law is not a political product. However, the efforts to enforce and implement it in certain areas still require the legitimacy of power through political formulations and modifications.

In connection with the process of transforming Islamic law into national law, at least three applicable methods are needed, namely: 1) exploring Islamic values from the Al-Quran and As-Sunnah; 2) the principles of Islamic law and their implementation into national law; 3) enforcement and its application in the context of positive law.[23] So far, among the regulations or products of law with Islamic nuances, they generally consist of three forms: 1) Islamic law, materially and formally, uses an Islamic approach and style; 2) Islamic law in the *taqnin* process is realized as a source of legal material, where the principles animate every product of legislation; 3) Islamic law is materially and formally transformed by persuasive sources and authoritative sources.[24]

The implementation of Islamic law is not limited to legislation but also to transforming the value of Islamic law in the national legal system. The considerations that affect the use of the normative aspect of Islamic teachings to become one of the material sources in every legal formation include: 1) philosophical facts of the Indonesian nationality that give birth to moral ideals and legal ideals from a religious life pattern and this pattern will dominate social interaction because it is directly related to the

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[22]Zainal Arifin Hoesein, "Pembentukan Hukum Dalam Perspektif Pembaruan Hukum," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 3 (2012): 307–27.

[23]Darussalam Syamsuddin, "Transformasi Hukum Islam Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 2, no. 1 (2015): 1–14.

[24]Muhammad Fahmi Al Amruzi, "Membumikan Hukum Islam Di Indonesia," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 14, no. 2 (2016): 172–84.

transcendental dimension; 2) the history of Indonesian society shows that ethnic diversity is the result of the meaning of the transcendental dimension in its application to the horizontal dimension; 3) the national legal system has provided a basis that guarantees the normative aspects of Islamic teachings.[25] In line with that, Hasbi Ash Shiddieqy argued that Islamic law has absolute provisions that cannot be changed, namely 1) *Takamul*, which means that Islamic law forms the people in perfect and unanimous unity; 2) *Wasathiyah*, means that Islamic law takes the middle way. Thus, it is not only physically oriented to oneself but also concerned with the spiritual aspect; 3) *Harakah* (dynamic), Islamic law can develop and move and has the life force in shaping itself according to the development or progress of the times.[26]

Islamic law contains eternal natural values and rests on solid principles that will not change. This field covers all *qath'iyah* orders and is the fundamental identity of Islamic religious law. Among the fundamental values in this dimension, the formulated things in the objectives of Islamic law (*maqashid al-shari'ah*) are human happiness, which is described in terms of benefit, justice, enjoyment, mercy, and so on. In addition, there are also instrumental values contained in the process of practicing the teachings of Islamic law, which is essentially a transformation from Islamic legal values in *abstracto* to *in concreto* values. This transformation can be regarded as a process of actualizing and operationalizing Islamic law in people's lives. A very important dimension is that Islamic law is adaptive. This means that we can accept new values and external values that develop according to the demands and changing times.

If we withdraw the formulation of the idea of a nation and state in Indonesia, which is extracted from paragraphs II and III of the opening of the 1945 Constitution, it is stated that several values of Islamic law include; independent, united, sovereign, just, and prosperous, by the grace of Allah the Almighty, driven by a noble desire and a free national life without realizing this value has been believed and accepted by all Indonesian people. This fact can be drawn that Islamic law has been embedded in the national legal system through legislation and the actualization of the value of Islamic law itself.

Implementing Islamic law does not have to be radical and revolutionary and based on antipathy to the prevailing legal system. In principle, Islamic law can be applied directly, and some must be transformed first. As far as possible, this process can be done with political culture and *da'wah*. It means that Islamic law principles can be drawn and then poured into national law. Thus, civilizing Islamic law does not only exist in the field of civil law, especially family law, but also in other fields such as criminal law, constitutional law, and state administrative law. This orientation places Islamic law consciously as a source of national law without creating contradictory and problematic assumptions.

[25]Abdullah, *Pengantar Kompilasi Hukum Islam Dalam Tata Hukum Indonesia*. h. 19.
[26]Bagus Amirullah, *Pluralitas Budaya Di Indonesia Dan Korelasinya Dengan Status Hukum Islam Dalam Tata Hukum Positif Di Indonesia*. h. 2.

CONCLUSION

The existence of Islamic law in the legal system in Indonesia continues to exist through the codification and unification of national legislation in the form of statutory regulations. The embodiment of laws and regulations based on Islamic law has developed rapidly and strengthened by issuing laws to autonomous regulations at the provincial and district/city levels. This description confirms that the position of Islamic law is equal to Western law and customary law as a source of national law formation. Nevertheless, the efforts to actualize Islamic law still often experience problems caused by three main problems, namely epistemological, methodological, political, social, and cultural problems. However, the arrangement and development of national law in different contexts integrates a legal system that is harmoniously structured and follows the needs and developments of community culture, providing great space and opportunity for Islamic law to be fully implemented in Indonesia through legislation or the transformation of Islamic law values for legal reform under the auspices of The Five Principes and the 1945 Constitution without causing contradictory and problematic assumptions. Therefore, as an implication for research on the development of Islamic law, it needs to be carried out on an ongoing basis, including a strategy for legal reform in Indonesia through applying Islamic law.

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