

## Implementation of Islamic Law in Indonesia in Constitutionalism Politics

**Fauziah Hayati**

UIN Antasari Banjarmasin

Fauziahhayati@gmail.com

### Abstract

*This study aims to determine the implementation of Islamic law in Indonesia in the politics of constitutionalism. This study uses a descriptive qualitative method with a literature study approach. The result of this research is the implementation of Islamic law in constitutionalism politics is reflected in the form of laws and regulations that reflect Islam as a selector for the existence of laws and regulations that develop in Indonesia. The power of Islam will always provide control over the substance or material of existing laws and regulations, as long as they do not conflict with Islamic values and norms, then these laws and regulations will be recommended by Islamic forces. Islam will straighten according to the values of goodness and truth of Islam.*

### Keywords

implementation; islamic law; constitutionalism politic



### I. Introduction

The position of Islamic law is always interesting to discuss, where there are adherents, the space will be filled with buildings and a legal system will be formed. Because Islamic law follows where the person is. As the principle of Islamic personality (Fauzani, 2021). Bahtiar Effendy wrote that the most prominent feature of Islam is its omnipresence. This is a view that recognizes that where Islam is present it always provides "the right moral guidance for human action". This was emphasized by Muhammad Hisham, that the character of Islam is not limited to the domains of beliefs, rituals, and morals, but also includes the organization of society (Radjab, 2013). Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Indonesia as one of the countries where the majority of the population is Muslim, of course, cannot be separated from Islamic law as a set of rules that regulate the lives of its citizens who are Muslim in daily life from problems related to worship to how to interact widely in social life.

Judging from its history, the legal system in Indonesia is plural. This is because the legal system in Indonesia has its own pattern. The legal systems that have been in force in Indonesia are the customary law system, the Islamic legal system, and the western legal system. The customary law system is a legal system that has been known and applied in Indonesia for a long time, this legal system was known long before Islam came to Indonesia (Kushidayati, 2014). The Islamic legal system began to exist at the same time as the arrival of Muslims in the Indonesian archipelago. According to history, Islam came to the archipelago around the seventh century AD. However, there is another opinion that states that Islam only arrived in Indonesia around the 13th century AD. Meanwhile, the Dutch government introduced western law in 1602 through the VOC when it controlled

trade in Indonesia. At first, western law only applied to Europeans living in Indonesia, but over time in the economic and trade fields, the law was also applied to Indonesians (Maswanto, 2020).

In 1945 Islamic law in Indonesia began to emerge its identity with the birth of the formulation of the basic state contained in the Jakarta charter. One of the basic formulations of the Indonesian state is "a country based on God by implementing Islamic law for its adherents". However, for reasons of religious pluralism in Indonesia, the basic formulation in the Jakarta Charter was changed. 1) Hossein, *History of the Development of Islam in Indonesia*, Intercity Library, Jakarta, 1961, .114. 2) Abdul Wahid & Musthofa, *Contemporary Islamic Law*, Sinar Graphic, Jakarta, 2013, .115. with "God Almighty". Hazairin is of the opinion that the amendment to one of the basic formulations of the State in the Jakarta charter contains the legal rules regulated in Article 29 paragraph (1) of the 1945 Constitution that the Republic of Indonesia is based on the One Godhead. This can be interpreted, among other things: "Muslims are obliged to carry out the teachings of Islamic law, just like other religions are obliged to practice their religion". While another interpretation states "Religious teachings do not require the assistance of the state power to carry them out because it is a personal obligation to their respective religions" (Ahyani, Bumaeri, & Hapidin, 2021).

This paper will explore Islamic law and the Politics of Constitutionalism in the wake of the Unitary State of the Republic of Indonesia. This study is based on the assumption that although politics should ideally be subject to law, in reality, the law is determined by the political configuration of the existing political power. Thus, this paper will describe and analyze the relationship between political configuration and the position and development of Islamic law in Indonesia (Islamy, 2021).

## **II. Research Method**

The type of research used is descriptive research using qualitative methods (Sulianti, Safitri, & Gunawan, 2019). The type of research used in this research is library research, namely research conducted by collecting data or scientific articles, collecting data for the object of research or the nature of the library, or research conducted to solve the main problem about the library in question and an in-depth review (Mughtar & Suryani, 2019). The sources of data in this study are the results of research or the writings of researchers, or the authors do not observe or participate directly in the reality described by them but provide library materials that are collected and published by the authors who provide feedback. or criticism of character education.

## **III. Result and Discussion**

According to H. A. R. Gibb, Islamic law has an important role in building public order in Muslims and has a great influence on their lives. Because Islamic law as an integral part of Islamic teachings cannot be separated from the basic framework or basis of Islam (al-dinul). In the life of the Islamic community, the norms or rules contained in Islam are implemented in the form of basic rules called Islamic law (Islamic law). Allah SWT. requires Muslims to implement Islamic law in their personal, social, and state lives. Shari'a must be implemented both as a religion and as a social institution (Yufi & Rini, 2011).

Islamic law as a social institution has been actualized and even further internalized into various social institutions available in society. The process of allocating Islamic law in

the dimensions of sharia into these social institutions becomes the basis and gives meaning and direction to the lives of the Indonesian people (Basuki, 2012).

Law functions among other things for social engineers. The law becomes a guide for the implementation of political power. Legal norms are themselves a product of politics, a product of power that tends to protect itself. Therefore, there is always a probability that always comes up, the purpose of which is also to secure power. This happens in countries that adhere to totalitarianism with all its packages, including imagined democracy (Jumadi, 2016).

Law is a social institution in society to ensure the implementation of rights and obligations among members of society, both in relation to individuals and to the state. Law is also a tool of social engineering for social welfare. This is the case with Islamic law (Assulthoni, n.d.).

Islamic law when studied in-depth in a specific context has different meanings. Therefore, to clarify the limits or definitions covered in this study, it is distinguished between Islamic Law, Fiqh, and Shari'ah.

Islamic law is a uniquely Indonesian term, as a translation of al-fiqh al-Islami, this term in the discourse of Western jurists is used Islamic Law. Neither the Qur'an nor the Sunnah is found, what is used is the word shari'ah which in its elaboration later the term fiqh was born. There is a very close relationship between sharia and fiqh (Assulthoni, n.d.). Because fiqh is a formula that is understood from sharia. Sharia cannot be understood properly, without going through fiqh or adequate understanding, and is formulated standardly. Fiqh as a result of the adequate effort is greatly influenced by the demands of space and time which include the faqih (plural fuqaha) who formulate it. For this reason, it is very natural that later there will be differences in their formulations (Suwandi & Setyobudi, 2020).

Shari'ah can be translated into English canon law of Islam. Fiqh or Islamic jurisprudence is knowledge of one's rights and obligations as stated in the Qur'an and Sunnah. The concept of Islamic law has a dual function; First, it functions as shari'ah, and second, it functions as fiqh (Muhamadun, 2020).

The constitution comes from the French constitution which means to form. The formation of a state or compiling and mentakan a state. Basic (initial) regulations regarding the formation of a state. The Dutch language is known as grondwet which means constitution. In German, it is known as grundgesetz.

In terminology, a constitution is a number of basic rules and legal provisions that are formed to regulate the functions and structures of government institutions, including the basis of cooperative relations between the state and society (the people) in the context of the life of the nation and state. So, the constitution is a number of basic rules and legal provisions that are formed to regulate the functions and structures of government institutions, including the basis of cooperative relations between the state and society (the people) in the context of the life of the nation and state (Muhammad Julijanto, Ag, & Ag, n.d.).

The existence of a constitution in the constitutional life of a country is a very crucial thing because without a constitution it is possible that a country will not be formed. The constitution is very important as a limiter to the government in running the country and guarantees the rights of citizens and every resident on the other hand. Therefore, according to Meriam Budiardjo, in countries that base themselves on constitutional democracy, the basic law has a unique function, namely limiting government power in such a way that the exercise of power is not arbitrary, thus it is hoped that the rights of citizens will be respected. more protected<sup>274</sup>. Kusnadi explained that the constitution seen from the

function is divided into two parts: 1). Sharing power within the State; 2). Limiting the power of the government or rulers in a country (Hakim, 2021).

Islamic law in Indonesia in the last decade has been very encouraging due to many factors, according to Ahmad Azhar Basyir the sense of religiosity among Muslims shows an increasing trend, so that awareness of activities and obligations to carry out Islamic teachings which are believed to be an outpouring of God's mercy for the universe is also increasing. . Islamic law is an integral part of Islamic teachings that cannot be separated or separated from the lives of Muslims, on the basis of their Islamic beliefs.

The politics of Islamic law is a strategy in fighting for Islamic law and its implementation through the legal system and judicial system in certain areas. In some areas, the most prominent is in the area of family law. Because family law is felt as the front line in the development of the Muslim community which begins with the formation of a *sakinah* family. The earliest development of Muslim communities comes from the family, with the assumption that a prosperous family and successful in nurturing all its members will contribute to progress in society and in the larger community (Hidayat & Arif, 2006).

Political influence on the law can apply to law enforcement and the characteristics of the products and the manufacturing process. Philippe Nonet and Philip Selznick (1978) once said that the level of development of a certain society can affect the pattern of law enforcement, they said that a newly born society must show and prove itself can control the situation, control its members and create an order as its main political commitment.

Political influence on the law can apply to law enforcement and the characteristics of the products and the manufacturing process. Philippe Nonet and Philip Selznick (1978) once said that the level of development of a certain society can affect the pattern of law enforcement, they said that a newly born society must show and prove itself able to control the situation, control its members and create an order as its main political commitment.

The relationship between the constitution and religion in the state. Pancasila democracy where religious values are accommodated in the formation and implementation of social life. This understanding is the legitimacy of the regulation of religious practice in Indonesia which is monumentally contained in the Jakarta Charter and the 1945 Constitution, where the Jakarta Charter is juridically normative to embody the 1945 Constitution. Both are a series of constitutions that are enacted as the basis for the implementation of religious life and the legal system in Indonesia. Article 29 of the 1945 Constitution becomes the basis for legal life in the religious field, thus legislation can be created for adherents of the Islamic religion.

The institutionalization of Islamic law in Indonesia is manifested in legal struggles in the effort to formulate legislation and the legal system in Indonesia. This thought tries to analyze the development of Islamic law from a historical and formal juridical perspective in the legal system in Indonesia.

The institutionalization or legislation of Islamic law is an attempt to make Islamic law nationally positive in Indonesia. Islamic law in this sense is all legal norms derived from Islamic law, such as family law, and banking based on profit-sharing principles of Islamic banking. The law of worship requires the involvement of the state in regulating the implementation of religious rituals better. Likewise, the public law system seeks to regulate and prevent greater violations, so that Islamic public law legislation becomes one of the alternatives in its implementation.

Islamic law is a law that applies and is integrated with reality, even though the law has not yet become an official settlement informal (government such as positive law currently in effect. However, the *de facto* reality of the application of Islamic law is

parallel to the awareness of Muslims in everyday life in solving problems). various social conflicts.

It is a dynamic that develops in Muslim society. If the relationship between Islam and the state is very interesting to observe and synchronize with the needs and deadlocks. The impasse in the political and legal settlement in Indonesia. Politically, the dynamics of national politics are very thick with issues of interest. And this political problem will not be able to quickly provide a guarantee for a quick resolution. The debate over the relationship between Islam and politics has long colored the national political stage. More specifically, the relationship between Muslims and the national political map for Muslims. The phenomenon of the relationship between religion and politics, states that the old paradigm that seeks to isolate religion from politics will automatically go bankrupt, and will be replaced by a new paradigm of the interplay between religion and politics.

In my mind, the politics of constitutionalism is an attempt by Muslims to implement their religious laws in the life of the nation and state. The nature of Islamic teachings is very dependent on the perception and interpretation of its adherents, even though the pattern of understanding and Islamic thought related to the implementation of Islamic sharia is divided into three means of thought, the estuary in principle is the implementation of Islamic teachings in the life of the Muslim community, regardless of the form of the government system and the state system in essence. is the values of Islamic teachings that can be implemented in overcoming the problems of existing social life. The aspirations of Muslims in the field of Islamic law have never disappeared and receded from period to period, as long as injustices to Islamic society have not been fulfilled, because politically Muslim law is often oppressed and not positioned proportionally on the national political map, resulting in continuous turmoil. . The hypothesis that can be raised from this reality is that the power of Islam is ignored in the national political arena, even though it is given a role but is always suspected of hindering modernization and democratization.

As a logical consequence of the nation-state, where Islam is not the basis of the state, but Islam is equal to other religions and has an honorable place in the constitution that the Unitary State of the Republic of Indonesia is neither a secular state nor a religious state, it is impossible for Islamic law to be legally enforceable. formal/direct is the sole authoritative source for national law. However, Islamic law, in its contestation with Western law and customary law, can be a material and persuasive source for national law.

While political constitutionalism is a political movement that seeks to incorporate Islamic teachings or Islamic law into the state constitution in the life of the nation and state in the existing national legal system, and without any resistance and conflict with existing positive law. This frame of mind is a political struggle, as well as encourages cultural and structural movements. The cultural strategy focuses more on how to socialize and apply Islamic values culturally in the lives of Indonesian people without having to formally legitimize them with complete Islamic symbols. This approach is more inclusive and ready for dialogue with even different ideologies.

#### **IV. Conclusion**

Islamic law is an integral part of Islamic teachings that cannot be separated or separated from the lives of Muslims, on the basis of their Islamic beliefs. So that Muslims will experience inner peace in religious life. Islamic law is the foundation and order of life that gets full support from the state. As confirmed in Pancasila and the 1945 Constitution.

Religious life. Islamic law is the foundation and order of life that gets full support from the state. As confirmed in Pancasila and the 1945 Constitution.

Implementation of Islamic Law in Political Constitutionalism is reflected in the form of laws and regulations that reflect Islam as a selector for the existence of laws and regulations that develop in Indonesia. Both at the central legislative level, the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional People's Representative Council (DPRD). The power of Islam will always provide control over the substance or material of existing laws and regulations, as long as they do not conflict with Islamic values and norms, then these laws and regulations will be recommended by Islamic forces. Islam will straighten according to the values of goodness and truth of Islam.

## References

- Ahyani, H., Bumaeri, A. D. A., & Hapidin, A. (2021). Transformasi Nilai Hukum Islam terhadap Hukum Positif di Indonesia. *Amnesti Jurnal Hukum*, 3(2), 60–70. Retrieved from <http://jurnal.umpwr.ac.id/index.php/amnesti/article/view/1118>
- Assulthoni, F. (n.d.). Islam Modern Perspektif Abdullahi Ahmed an-Na' Im. 283–301.
- Basuki, U. (2012). Konstitusionalisme HAM Indonesia: Dinamika Pengaturan HAM Indonesia Pasca-Amendemen UUD 1945. *Supremasi Hukum*, 1(2), 483–505. Retrieved from <http://ejournal.uin-suka.ac.id/syariah/Supremasi/article/view/1927>
- Fauzani, M. A. (2021). Potret Konstitusionalisme Hukum Islam dalam Bingkai Ketatanegaraan Indonesia. 2(2), 80–98.
- Hakim, H. M. I. El. (2021). RELEVANSINYA BAGI KONSTITUSI INDONESIA. 2(2).
- Hidayat, & Arif. (2006). Interrelasi konstitusionalisme dan demokrasi perwakilan dalam sistem ketatanegaraan indonesia pasca perubahan. 215.
- Islamy, A. (2021). Landasan Filosofis dan Corak Pendekatan Abdurrahman Wahid Tentang Implementasi Hukum Islam di Indonesia. *Al-Adalah: Jurnal Hukum Dan Politik Islam*, 6(1), 51–73. <https://doi.org/10.35673/ajmpi.v6i1.1245>
- Jumadi. (2016). Memahami Konsep Konstitusionalisme Indonesia. *Jurnal Jurisprudentie*, 3(Nomor 2), 110–122.
- Kushidayati, L. (2014). the Development of Islamic Law in Indonesia. *Qudus International Journal of Islamic Studies*, 1(2), 163–180. <https://doi.org/10.21043/QIJIS.V1I2.185>
- Maswanto, A. R. (2020). Reaktualisasi Dan Kontekstualisasi Pemahaman Hukum Islam Di Era Industri 4.0. *CENDEKIA: Jurnal Studi Keislaman*, 5(2). <https://doi.org/10.37348/cendekia.v5i2.79>
- Muchtar, D., & Suryani, A. (2019). Pendidikan Karakter Menurut Kemendikbud. *Edumaspul: Jurnal Pendidikan*, 3(2), 50–57. <https://doi.org/10.33487/edumaspul.v3i2.142>
- Muhamadun, M. (2020). Batas-Batas Konstitusional Hukum Islam Dalam Hukum Nasional. *Jurnal Indo-Islamika*, 8(1), 12–22. <https://doi.org/10.15408/idi.v8i1.17536>
- Muhammad Julijanto, O., Ag, S., & Ag, M. (n.d.). IMPLEMENTASI HUKUM ISLAM DI INDONESIA Sebuah Perjuangan Politik Konstitusionalisme. 666–685. Retrieved from <http://www.republika.co.id/berita/dunia-islam/islam-mancanegara/12/05/09/m3qcqk-2030->
- Radjab, S. (2013). Negara Hukum Demokratis: Konstitusionalisme, 8, 93–101.
- Shah, M. et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. P. 276-286.
- Sulianti, A., Safitri, R. M., & Gunawan, Y. (2019). Implementasi Pendidikan Kewarganegaraan Berbasis Kearifan Lokal dalam Membangun Karakter Generasi

Muda Bangsa. *Integralistik*, 30(2), 100–106.  
<https://doi.org/10.15294/integralistik.v30i2.20871>

Suwandi, S., & Setyobudi, T. (2020). Sintesa Hukum Islam dan Kebudayaan Jawa Suatu Pendekatan Profetik /The Synthesis of Islamic Law and Javanese Culture A Prophetic Approach. *Journal de Jure*, 12(2), 255–278. <https://doi.org/10.18860/j-fsh.v12i2.10090>

Yufi, O. :, & Rini, W. (2011). Pandangan Politik Hukum Islam Terhadap Khi Di Indonesia. *Asas*, 3(1), 30–39. Retrieved from <http://103.88.229.8/index.php/asas/article/view/1650>