

Research Article

Integration of Religious and Social Values in the Development of the Indonesian Constitution Era 5.0

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ORCIDEfa Rodiah Nur: <https://orcid.org/0009-0000-6316-5580>**Abstract.**

This study examines the inclusion of Islamic religious and social values in the development of the constitution in Indonesia because it is undeniable that the role of religion brought by the Prophet Muhammad is an inspiration for making laws in the country. The social values of the community or what is referred to as customary law are also integrated into positive law or the Indonesian constitution. This research uses a socio-legal approach. This study concludes that religious and social values of society enter National Law through adjustment to legal values and through system transplantation. The existence of Islamic Law in the Development of National Law identified that the paradigm of Pancasila in which the Islamic legal system is contained and the positivization of Islamic law into national law through several codifications and legal unification has been in the form of laws and regulations. Religious values and community customs are integrated into the constitution of Indonesia, which has the potential to continue to develop along with the times and technology.

Keywords: integration, religion, social, constitution

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1. Introduction

Islamic law has indeed completed its process of revelation through the Qur'an and the hadith of the Prophet, but life or legal events continue to come and develop dynamically. For this reason, it is necessary to solve such legal problems, the problems solved always coincide with new problems that also demand solutions. Efforts to make Islamic law a tool to solve these legal problems must continue to be pursued as a form of response to changing and modern times.

Islamic law is a law that has long lived and developed in Indonesian society and has become part of the values that live in the archipelago society so that it can be used as a basic material in building a national legal system. The positivization of Islamic law is a necessity both in the context of academic studies that always follow eclecticism and

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the democratization process based on the majority of the population and ultimately it is a challenge that Islam must show its great promises, namely *rahmatan lil 'alamin* and *li-tahqiq mashalih al-nas*. Transforming the principles of Islamic law into national law is possible and a necessity.

Islamic law is one aspect of Islamic teachings that occupies an important position in the view of Muslims, as it is the most concrete manifestation of Islam as a religion. It is impossible to understand Islam without understanding Islamic law.[1] In Islam, in addition to the dimension of law (sharia), there is also the dimension of creed and morals, all three of which cannot be separated from each other. Sharia is the most important space for expression of religious experience for Muslims and is the main object of reflection on the Qur'an and the ideal example of the Prophet Muhammad. Sharia represents a system of religious values which is a frame of reference for the behavior and actions of every Muslim.

Indonesian state is currently implementing the national law reform agenda, and Islamic law is part or sub-system of national law, Islamic law needs to be the object of study, so that the agenda of national law reform or reform also includes the understanding of renewal of Islamic law itself, taking into account factors of the Islamic legal system that can be transformed into national law towards a future that is expected to make Islamic law as a unified system that is 'supreme' in the container of the Republic of Indonesia. Thus, Islamic law as a law that lives and develops in society has its own characteristics, including Islamic law with a responsive, adaptive and dynamic pattern.[2]

Legal reform is one of the important mandates in the implementation of the national reform agenda. The agenda includes the rearrangement of various legal and political institutions from the central level to the village government, the renewal of various laws and regulations starting from the 1945 Constitution to the Village Regulation level, and updates in attitudes, ways of thinking and various aspects of the behavior of our legal community towards conditions that are in accordance with the demands of the times. In other words, the legal material reform agenda is covered by the entire system in components that include the definition of institutional reform, and legislative reform[3]. (instrumental reform), and cultural reform.

Islamic law can be transformed and integrated into national law, so the renewal of Islamic law is done by developing the principles of Islamic law. Without the interaction between the principles of Islamic law and the development of society, the ideal of realizing Islamic law into national law is impossible to achieve[4]. Islamic legal legislation is the most important manifestation of Islamic modernism. With the integration of Islamic

law with national law, various internal problems of Islamic legal epistemology will be solved by themselves[5].

Integrating the principles of Islamic law and the social customs of society into national law can be seen from some strengths and opportunities of Islamic law. In terms of strength: First, the character of Islamic law is universal and flexible and has very high dynamics because it has two dimensions, namely *tsabat* (consistency) and *tathawwur* (transformation) which allows Islam to always be relevant to social and temporal changes that always occur. Second, as a law based on religion, Islamic law has a very strong binding, not limited to being a rule with a humanistic profane dimension, but also with a transcendental dimension. Third, Islamic law is supported by the majority of the Indonesian population, because the majority of the Indonesian population is Muslim, and lastly is the historical and sociological way Islamic law has been rooted in the practice of people's legal life.

As for the opportunities for Islamic law to be transformed into national law, among others: First, Pancasila as the source of all sources of law in Indonesia, and the 1945 Constitution as the country's constitution give importance to religion. This opens up opportunities for the development of laws derived from religion (Islamic law). Second, legal development is directed to the growth of public legal awareness and legal awareness of the majority of Muslims cannot be separated from Islamic law. This means that the national law desired by the Indonesian state is a law that accommodates and incorporates religious law and does not contain norms that conflict with religious law. Third, there is political will from the government to develop Islamic law in the national legal system although it is still limited. Finally, the Indonesian Muslim community has a strong desire to punish with religious law according to the demands of its creed.

Preparation of the framework of the national legal system, inventory in adjusting the elements of the legal order in the framework of legal reform while taking into account the plurality, legal order in force in Indonesia, namely customary law, Islamic and Western law. These three legal systems also function as raw materials for national legal development.

Starting from the national development policy in the field of law concerning legal material, legal apparatus, and legal facilities and infrastructure, as well as the realization of a national legal system based on Pancasila and the 1945 Constitution through national legal structuring by strengthening the national legal framework, inventorying and adjusting the elements of the legal order in the framework of legal reform. The development of legal apparatus, legal facilities and infrastructure, national discipline, and more respect and upholding of human rights for the realization of legal culture in the context of

national legal development and renewal is important. Legal materials, apparatus and law enforcement, development of legal facilities and infrastructure, legal culture, and human rights. Preparation of the framework of the national legal system, inventory in adjusting the elements of the legal order in the framework of legal reform while taking into account the plurality, legal order in force in Indonesia, namely customary law, Islamic and Western law. These three legal systems also function as raw materials for national legal development.[6]

Legal development is part of national development. However, it should be noted that according to the mandate of the preamble to the 1945 Constitution "Law" is not only a tool, but also national development itself must be within the framework of law[7]. According to Ismail Saleh, there are three dimensions of national legal development. First is the dimension of maintenance, second is the dimension of renewal, and third is the dimension of creation which means the dimension of dynamics and creativity.[8]

Departing from the above three dimensions of national legal development, it can be said that "legal extraction" and "legal development" are part of the second and third dimensions. Excavation and development of law is a necessity and at the same time a logical consequence to be able to reform and create new laws to realize national laws. The legal system that applies in our homeland is not only one but three, successively according to its existence in our archipelago, namely customary law, Islamic and Western law both from Continental Europe and Anglo Saxons. In the formation (and development) of law,[9] including Islamic law, it is necessary to heed provisions that meet philosophical values that are core to a sense of justice and truth, sociological values that are following the values that apply in society (both cultural and religious) and juridical values that are following the provisions of applicable laws and regulations.[9]

In essence, the development and development of national law is the development of legal principles, legal principles, and legal rules that can become a means and guarantee justice, truth and order, and legal certainty so that a free, equal, peaceful, and prosperous Indonesian society is realized. From this angle, the formation of national law means the renewal or formation of "new" legal principles, legal principles, and legal rules.[10] There are two common ways taken in the formation of national law either through the renewal or formation of "new" principles, principles or legal principles, namely through the formation of laws and regulations and through the decisions of judges or jurisprudence. At this time in any system, the judge's decision (jurisprudence) occupies a very important place. In jurisprudence, one can find concrete rules. Islamic law and customary law have ents or values that in the development of the national legal system have been absorbed and become one of the paradigms of national legal

development. From this background starting point, it can be described that the focus of the problem that can be used as the focus of the discussion, namely how is the integration of religious and social values in the development of the constitution in Indonesia era 5.0?

2. Methods

This study uses a normative juridical method. Normative juridical research is legal research that is carried out by focusing on library research, namely by researching and reviewing library materials, namely laws and regulations and scientific articles.

3. Results and Discussion

3.1. Integration of Religious Values in the Development of the Indonesian Constitution

Islam has universal and absolute values throughout the ages, but it is not a rigid dogma in the face of the times and their changes. Islam has always presented itself in a flexible form when facing the societies it encounters with a variety of cultures, customs, and traditions. Islamic law entered Indonesia along with the entry of Islam into the archipelago. Since Islam was adopted by the population, Islamic law began to be applied in the system of social life. Legal norms or rules are used as a guideline for life after first experiencing acculturation. It was from this process of social interaction that Islamic law began to take root and become a legal system in society.

The development of Islamic law was also influenced by the policies of the Dutch colonial government, which tried to inhibit the enactment of Islamic law in various ways. All policies, especially in the field of politics and law, are made to castrate the existence of Islamic law. In the political field, for example, the Netherlands carried out political Christianization, namely efforts to support the zending mission and the spread of Christianity into Dutch East Indies society. In the field of law, the Dutch government tried to confront Islamic law with customary law and reduce it in its enforcement.

The position of Islamic law in the legal system in Indonesia has experienced ups and downs. Islamic law is not the only legal system that applies, but there are other legal systems, namely customary law and Western law. These three legal systems influence each other in efforts to establish a national legal system in Indonesia. This can be seen

when on the eve of independence, the founding fathers differed on the form and basis of the state and the laws that would apply in Indonesia.

As a historical fact, religion and culture can influence each other because they both have values and symbols. Religion is a symbol that symbolizes the value of obedience to God. Culture also contains values and symbols so that humans can live in it. Religion needs a system of symbols, in other words, religion needs a religious culture. But the two need to be distinguished. Religion is final, universal, eternal (perennial), and absolute. While culture is particular, relative, and temporary. Religion without culture can indeed develop as a private religion, but without culture religion as a collectivity will have no place.[11] Religion and culture have two things in common: they are both value systems and symbol systems and they are easily threatened whenever there is a change. Religion, in the perspective of the social sciences, is a value system that contains several conceptions about the construction of reality that play a major role in explaining the structure of normative order and social order as well as understanding and interpreting the world around it. While traditional art is an expression of creation, human works and charities (in certain societies) that contain values and messages of religiosity, philosophical insights, and local wisdom.[12]

The enactment of Islamic law in Indonesia has experienced ups and downs along with the legal politics applied by state power. Even behind it all, it is rooted in socio-cultural forces that interact in the political decision-making process. Nevertheless, Islamic law has enjoyed continuous development, both through the channels of political infrastructure and political superstructure with the support of socio-cultural forces.

Different perspectives and interpretations in the diversity of Muslims' understanding of the nature of Islamic law have implications in their point of application. M. Atho Mudzhar explained the different perspectives in the field of Islamic legal thought which according to him were divided into four types: books of jurisprudence, decisions of religious courts, laws and regulations in Muslim countries, and fatwas of scholars.[13]

Charles J. Adams, also revealed that Islamic law is the most important subject in Islamic studies because of its comprehensive nature; it covers all areas of Muslim life and life. Unlike other ways of studying law, the study of Islamic law requires a special approach, because what belongs to the field of Islamic law is not only what is called law in European law, but also includes other social problems outside the area that law says.[14]

The transformation of Islamic law in the form of legislation (*takhrij al-ahkâm fi al-nash al-qânun*) is a product of interaction between the Islamic political elite (scholars, mass organizations, religious officials, and Muslim scholars) and the ruling elite,

namely politicians and state officials. For example, in the promulgation of Marriage Law No.1/1974, the role of the Islamic elite was quite dominant in approaching the elite at the legislative level so that Marriage Bill No.1/1974 could be codified.[15] The political decision-making procedure at the legislative and executive levels in terms of Islamic legal legislation (legal drafting) should refer to the legal politics adopted by the state power body collectively. A law can be enacted as a codified written regulation if it has gone through a political process in the state power bodies, namely the legislature, and executive, and meets the requirements and appropriate bills.

The conceptual approach of Islamic legal legislation procedure as proposed by A. Hamid S. Attamimi is that the government and parliament hold power in the formation of laws. It is stated in Article 5 paragraph (1) of the 1945 Constitution that 'the president holds the power to form laws with the approval of the House of Representatives.' Meanwhile, in the explanation of Article 5 paragraph (1) of the 1945 Constitution it is stated that 'except for executive power, the president together with the House of Representatives runs the legislative power in the state.[16]

When examining the legal history of the Dutch East Indies regarding the position of Islamic Law can be divided into two periods, first; The period of full acceptance of Islamic law (at the glory of the Islamic kingdoms in the archipelago). This period is known as the theory of reception in complexu. Second; The period of acceptance of Islamic law by customary law is known as the theory of receptie. This theory was put forward by Christian Snouck Hurgronje.

Despite these two theories, Islamic law in the Dutch East Indies era still prevails, although in certain areas of civil law. Inheritance Law, for example, in mid-1937 the Dutch East Indies government gave the authority to regulate inheritance to the District Court with Stablat 1937 No. 116 on the grounds that Islamic inheritance law had not been fully accepted by customary law. However, the religious court remains a court that resolves civil marital disputes for Muslims and based on Islamic law.

The position of Islamic law in legal politics in Indonesia Ismail Suny divides into two periods: 1) the period of acceptance of Islamic law as a source of persuasiveness, that is, the source of law that people must believe to accept, 2) the period of acceptance of Islamic law as an authoritative source, that source of law that has power. Ismail Suny's opinion was based on the establishment of the Unitary State of Indonesia where the Jakarta Charter animates the 1945 Constitution, based on a Presidential decree dated July 5, 1959 to return to the 1945 Constitution.

In the third stage of the amendment to the 1945 Constitution, it is stated that as a democratic country, Indonesia upholds the sovereignty of the people as mentioned

in Article 1 paragraph (2), which reads that sovereignty is in the hands of the people and is exercised according to the Constitution. While the statement as a state of law is mentioned in Article 1 paragraph (3), namely the state of Indonesia is a state of law. This basic concept is different from Rousseau's social contract theory of popular sovereignty, in which the law is based on the sovereignty of the people themselves. People's sovereignty in the context of the Indonesian state is the sovereignty of the people who are imbued and covered by the Almighty Godhead and the precepts of Pancasila.

Based on the theory of concentric circles that show how closely related religion, law, and state are. Therefore, with a majority Muslim population, of course, this can be used as a parameter of how the Indonesian state is in legal development in the future. Thus, the opinion that separates religion from the state is contrary to the values of natural law. As a state based on laws with the philosophy of Pancasila, it protects religion and provides guarantees for religious people, implements their religious shari'a, and even strives to include Islamic religious teachings and laws in the life of the nation and state. As stated by proclinator Mohammad Hatta, the regulations of the Indonesian state law, Islamic shari'a based on the Qur'an and Hadith can be used as Indonesian legislation so that Muslims have a shari'a system that is by Indonesian conditions

In the context of national law, Islamic law and customary law can also be used as sources of national law. Islamic law is still in the order of ideals (*ius constituendum*) not yet in the order of application as positive law (*ius constitutum*). For Islamic ethical values and law to prevail in society, the values of Islamic ethics and law must be expressed in the form of laws.

3.2. The Existence of Religious and Social Values as a Paradigm of the Indonesian Constitution Era 5.0

Islamic law, the law derived from the Quran and hadith, is one of the sources of raw material in the development of national law. The Qur'an as the main source of reference for *mujtahid* (jurists) in establishing Islamic law cannot be separated from the attention of legal observers. **Noel J. Coulson**[17] suggests that the teachings of the Qur'an are largely composed of general and broad propositions rather than specific legalistic formulations. The specific content of the laws derived from the Qur'an depends largely on the interpretation chosen by jurists to apply with pressure.

Savigny's view of[18] law also seems to apply to analyzing Islamic law. According to Savigny, the law is not just an expression consisting of a set of rules (judicial precedent).

This means that there is a dialogical atmosphere between the law and the existing social conditions of society. The social conditions surrounding the lives of *mujtahids* (jurists) have contributed to giving birth to Islamic legal thought. The product of Islamic law in force in Indonesia is a legal product born by *mujtahid* in the first centuries of the Hijri (10th century AD). The social conditions that existed at that time were very different from the social conditions of Indonesia today. The social changes brought about by time and space directly affect the change of law.

The development of national law is defined as building knowledge or concepts about national law. In this context, the concept to be built is the concept of legal responsibility for human/human actions based on Pancasila. National legal development is the development of the concept of value or the development of legal culture, which is built with the cultural paradigm of Pancasila ideology, namely the moral paradigm of religion, humanity, nationality, democracy, and the paradigm of social justice. In the construction of the development (science) of Indonesian national law, it deserves attention and deeper study.

In the context of the purpose of the law, Islamic jurists agree that the existence of Islamic law aims to bring about the benefit of mankind (*li tahqiqi al-maslahat al-'ammah*). If the law in its implementation is not able to provide a role as intended, then naturally the law will integrate and adapt to its environment (*tagayyur al-ahkam bi tagayyur al-amkinah wa al-azminah*).^[19] The function of this legal integration, Parsons says: "law's special functions are similarly defined in terms of these conditions and the requirements for their maintenance and extension". In the concept of Islamic law, several methods of *ijtihad* are known to respond to social changes that occur.^[20]

Among legal practitioners, **Bismar Siregar**^[21] stated that the obligation to observe Islamic law does not need to be formally mandated by law. Once a person declares himself a Muhammadan with a two-sentence *shahada*, the Sharia is observed to be carried out on him. The establishment of Sharia does not depend on the existence of an institution called an Islamic state. Islam as a religion, as well as a law, does not justify the so-called formalistic law because the application of the law is not from the state, not from anyone but from oneself as a demand of *aqidah*.

It must be realized that whatever the existing system, when it comes to the development of national law the orientation is to the codification and unification of national law. This means that it leads to the formation of legislation. And when Islamic law is positioned as a theory of legal science and the source or raw material of national law, it likely contains Islamic law, either in part or in some cases entirely. Here there is a very imprecise dichotomy between Islamic law and the other two laws. This means

that Islamic law can become national law not only with a normative approach but also academic and analytical.

4. Closing

The integration of religious and social values is an effort to provide the improvement of a legal product in the observance of laws and regulations, initially in the form of values practiced in the scriptures and then codified and unified in the form of positive law. Law in Indonesia is constantly updated either partially or integrally, in several areas of legal concentration or the entire legal system. Islamic law has a strategic position because the legal politics of national development cannot be separated from considering the majority of the ummah. Therefore, the transformation of Islamic values in the national legal system continues to develop with adjustments to positive law. In Indonesia, Islamic law is one of the paradigms in the preparation of the national legal system as well as in the renewal of the national legal system. The field of partial regulation has a special positive law that specifically regulates Islamic law, as well as the Law of Marriage and the Compilation of Islamic Law. At an integral level, Islamic law has always been a tool for considerations contained in a constitution in the 5.0 era.

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