



Post-Islamism and the Rise of Sharia Laws in Contemporary Indonesia: Aspirations of Implementing Islamic Laws in a Democratic Era

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Abstract

Islamism is an ideology and a movement that seeks to build an Islamic order in the form of an Islamic state and the enforcement of sharia law. However, in Indonesia during the democratization period in the early 2000s, many Islamic organizations, including Islamic parties and Islamic movements, liberated themselves from hiding and even opened their organizational philosophies to accommodate wider issues and concerns. While retaining their Islamic identity, some Islamic groups are turning towards the secularization of their goals and objectives as a means of adapting to the changing political environment. Political analysts refer to this development as post-Islamism. This change in attitude is to some extent due to the fact that Islamic legal institutions have become more prominent since the reform era. While retaining their Islamic identity, Islamic groups are turning towards the secularization of their goals and objectives as a means of adapting to the new political environment and changing the agenda of most Islamic political movements by way of Islamizing Indonesian values. That's why the color of legislation in Indonesia is more Islamic.

Keywords: Post-Islamism, Indonesian politics, Islamic law, Democratization

1. Introduction

Indonesia is a Muslim-majority country and Islam occupies a very central position in the daily life of most Indonesian people. Nevertheless, Indonesia adopts democracy as its political system. Based on this democratic system, a non-religious constitutional system can coexist and play an active role in carrying out religious values in the public sphere as a very visible feature. By looking at the relationship between Islam and democracy that occurs in the Indonesian state system, everyone can see that democracy is not an exclusive and monolithic system. On the contrary, democracy is a system that is built in which Islam can be one of its elements. Nevertheless, the relationship between Islam and the state in the course of Indonesia's history always experiences ups and downs. This depends on the political dynamics that developed in Indonesia at some point in the historical period.¹

Some Muslim societies asserts significant political power in the landscape of Indonesian citizens' political choices. Various Islamic organizations, for example, have often wanted a greater and more prominent role in Indonesia's political infrastructure. Some of them even went further, by encouraging and disseminating the issue of the widespread application of Islamic law, and some even called for the establishment of an Islamic state. In doing so, these Islamists consistently pose a major challenge to the power and authority of the Indonesian state.

Islamism as an ideology can be compared with other forms of ideology in the world. Asef Bayat defines Islamism as ideologies and movements that strive to establish some kind of an Islamic order, which can take the form of an Islamic state, Islamic law, or values derived from Islamic morality.² Hasan Al-Banna, Sayyid Qutb, both from Egypt, and Abu'l Ala Mawdudi from Pakistan are known as the main supporters of the ideology of Islamism. Ayatollah Khomeini, the architect of the 1979 Iranian Revolution, is also highly respected by supporters of Islamism. Islamism also undergoes changes, in some places Islamism gradually becomes what Bayat and others call Post-Islamism.³

¹ Imam Yahya and Sahidin Sahidin, "Relation of Religion and Practical Politics: Contextual Adoption of Constitutional Islamic Jurisprudence for Muslim Clerics in Indonesia," *HTS Theological Studies* 78, no. 1 (2022): 1–9.

² Asef Bayat, "The Coming of a Post-Islamist Society," *Critique: Critical Middle Eastern Studies* 5, no. 9 (1996): 43–52.

³ Hans Abdiel Harmakaputra, "Islamism and Post-Islamism: 'Non-Muslim' in Socio-Political

In Indonesia during the democratization period (late 1990s and early 2000s), many political organizations including Islamic parties and Islamic movements liberated themselves from hiding and even opened their organizational philosophies to accommodate wider problems and concerns of the nation. While maintaining their Islamic identity, some Islamic groups are turning towards secularization of their goals and objectives as a means of adapting to a changing political environment. Political analysts refer to this development as post-Islamism.⁴ The term post-Islamism has actually developed in the study of Islamic movements over the last 20 years. Post-Islamism was first put forward by Asef Bayat. Initially, he only used this term to explain the shift in discourse in Iranian society in the 1990s. Bayat traced the emergence of post-Islamism in Iran to three social phenomena: changes in architecture and social order of urban communities in Tehran since the leadership of Mayor Gholamhosain Karbaschi, the emergence of a new intellectual movement led by Abdul Karim Soroush and Mohammad Khatami, and a new wave of “Muslim feminists” in Iran.⁵

Post-Islamism, according to Bayat, is a condition and project to conceptualize and strategize the rationale and modalities of transcending Islam in social, political, and intellectual domains. This emerged as an alternative to the more rigid ideology of Islamism. Post-Islamism can be said to be a hybrid approach because it tries to combine Islam with democracy and modernity.⁶ Post-Islamism is an attempt to find a combination of religiosity and rights, faith and freedom, Islam and liberty.⁷

Discussing the dynamics of politics in Indonesia in general is almost the same as discussing the dynamics of ‘Islamic politics’ in Indonesia in particular, because the political aspirations of most Indonesian people are influenced by Islamic views.⁸ This paper discusses the development of Islamic politics in Indonesia in the post-reform era, namely the change in the direction of Islamic politics that better accommodates aspects of democracy while still accentuating

Discourses of Pakistan, the United States, and Indonesia,” *Al-Jami'ah: Journal of Islamic Studies* 53, no. 1 (2015): 179–204.

⁴ Azlan Tajuddin, “Development, Democracy, and Post-Islamism in Indonesia,” *International Journal of Social Science Studies* 4, no. 11 (2016).

⁵ Bayat, “The Coming of a Post-Islamist Society.”

⁶ Bayat.

⁷ Bayat.

⁸ R. William Liddle, “The Islamic Turn in Indonesia: A Political Explanation,” *The Journal of Asian Studies* 55, no. 3 (1996): 613–34.

the Islamic side. Government efforts to suppress Islamist groups have changed the agenda of most of the Islamic political movements, which initially supported the formation of the Islamic Caliphates they changed to Islamize Indonesian values. For this reason, the result is that Islamist groups merge into government agencies and carry out the Islamization of the democratic agenda, so that the colors of Indonesian legislation are more Islamic, such as the Zakat Management Act, the Halal Product Assurance Act, the Hajj and Umrah Management Act, even the contents of the Criminal Code Bill adopt Islamic legal norms.

2. Post-Islamism and Islamic Politics in Indonesia

Islamic social and political movements in Indonesia in the contemporary period show a different change compared to previous periods. In the past, Islam was interpreted as a personal piety which then formed a shared mindset that the decline of Muslims occurred due to outside influences, namely the secular system brought into the Islamic world. This kind of thinking ultimately demands a change in the secular system with a system based on sharia. Nowadays, the Islamic thought movements, including Islamic politics in Indonesia, lead to a view of Islamic compatibility with the values of modernity. This view projects the vision of Islam and its belief that Islam is needed in the modern era by implementing it in accordance with the present times.

Asef Bayat conceptualizes this phenomenon as post-Islamism. Islamic political thought and movement are directed at a strategy that goes beyond what Islamism aspires to in the social, political and intellectual fields, and directs efforts to adjust religiousness with personal rights, beliefs with freedom, and Islam with liberty.⁹ This view brings Islam into plural reality with diverse meanings and accommodates aspects of democratization, pluralism, multiculturalism, and human rights.¹⁰

Post-Islamism functions as a theoretical construction to signify change, differences, and roots of change itself. The emergence of post-Islamism does not necessarily mean the end of the Islamism movement, but the birth of post-Islamism begins with the experience of Islamism but with qualitatively

⁹ Bayat, "The Coming of a Post-Islamist Society."

¹⁰ Noorhaidi Hasan, "Piety, Politics, and Post-Islamism: Dhikr Akbar in Indonesia," *Al-Jami'ah Journal of Islamic Studies* 50, no. 2 (2012): 381.

different discourses and practices. Post-Islamism can be seen as an alternative that develops amid the failure of a movement that seeks to place Islam as a political ideology and thus change the political landscape of Muslim countries. The experience of many Muslim countries confirms that the movement instead stigmatized Islam and turned it into a kind of enemy of modern civilization.¹¹

According to Noorhaidi, post-Islamism emerged as a kind of hybrid practice, a process of cultural transactions that reflected how global culture assimilated with local culture. Noorhaidi stresses that post-Islamism is evidence of the emergence of personalized Muslim religious practices, which enable a person to demonstrate his religious identity through daily practices and can even be separated from his involvement in politics.¹² However, politics is basically about ritual and symbolism and is very important in legitimizing domination, not only in the eyes of the rulers, but also in the eyes of the general public. Thus, religious ritual practices that mobilize the masses can be used as a scene that Muslims show their dominance in the life of the nation and state in Indonesia.

Historically, some forms of Islamism that were intended to establish an Islamic state or Islamic system existed even before the formation of Indonesia as an independent nation-state in 1945. Debates to make the Jakarta Charter a part of the Indonesian constitution in 1945, unresolved debate in parliament between the Islamic and Nationalist factions in the late 1950s, and Darul Islam's armed uprising to build a separate Islamic territory, are a few examples of the Islamism movement in Indonesia. In addition, other events after the 1998 reform period, such as the threat of global terrorism in the name of Islam, both in the global and Indonesian contexts, and the development of the supporters of the Islamic Caliphs system, have made some militant Muslim groups change their behavior to be more careful in carrying out movement. They do not want to be associated with tougher groups abroad and choose to focus their movements on preaching through peaceful means.¹³

In contemporary times, the emergence of Islamic-based civic organizations such as the Liberal Islam Network, the Wahid Institute and the like are examples

¹¹ Hasan.

¹² Noorhaidi Hasan, "Ambivalent Doctrines and Conflicts in the Salafi Movement in Indonesia," in *Global Salafism: Islam's New Religious Movement*, ed. Roel Meijer (New York: Columbia University Press, 2009), 169–188.

¹³ Harmakaputra, "Islamism and Post-Islamism: 'Non-Muslim' in Socio-Political Discourses of Pakistan, the United States, and Indonesia."

for other more militant Islamic organizations to follow their pattern and this is a sign of the emergence of the post-Islamism movement. These groups spread democratic values such as human rights, religious freedom, etc., in public discourse through mass media, seminars, workshops, and other civic methods. These groups have brought a new nuance to Indonesian Islam and given people, both Muslims and non-Muslims, various understandings of Islam in a democratic system.¹⁴

In addition, the transition to the Prosperous Justice Party (PKS) is also an indication that Islamism in Indonesia has gradually changed into post-Islamism. Starting as a Muslim student movement named Tarbiyah in the 1980s, PKS found their political momentum after the fall of Suharto. They founded the Justice Party (PK) and participated in the Indonesian General Election in 1999. At that time, their rhetoric was inspired by Islamic ideals such as the application of Islamic law in Indonesia. Unfortunately, they only gained 1.4 percent of the total vote and did not cross the election threshold. After that, they gained more popularity and voters after turning into PKS which relinquished the rhetoric of Islamism and put more emphasis on increasing social welfare and public interests based on Islamic values and democracy. The results of this transformation are quite surprising because PKS always gets around 7% of the total votes in each General Election up to now, which makes them one of the political forces of Indonesia.¹⁵

There are a number of other things that can be said about the realm of post-Islamism in contemporary Indonesia, including how Islam has permeated mainstream culture and has become prominent in the public sphere. Since the onset of reform, political Islam has become part of the joint political activity in Indonesia which links the reality of religion with the reality of political parties. During the General Elections carried out in the reform era, political activities are always enlivened with Islamic attributes and agendas that voice Islamic aspirations. This method shows that there is great hope for political parties to win a majority Muslim vote. Of course, this is not a theory but it is limited to reality because since the attributes of Islam are installed in the Indonesian political sphere, the majority of Muslims are not entirely in one line. Muslims are scattered with their personal principles and platforms, and they are not easily provoked by the meaning of symbols and Islamic attributes. This shows

¹⁴ Harmakaputra.

¹⁵ Harmakaputra.

that Indonesian Muslims interpret Islamic attributes as a religious spirit itself. It appears amid the diversity of the Indonesian nation. Some Muslims also often assert themselves as a representation of the choice of Muslims in Indonesia as a non-political Islam.¹⁶

This transition from Islamism to post-Islamism underlines the fact that Islamism is a fragile ideology. Nurcholish Madjid once predicted that Islamism would only have a short life span because of its nature as a form of apology to modern Western ideology. According to Madjid, Islamism is a way to compensate Muslim inferiorities towards the West and try to show that Islam is superior or at least equal to the West. Furthermore, Madjid states that if Muslims believed in the superiority of Islam in a spiritual or religious sense, they would not need Islamism to become Islam. Being a Muslim demands to be creative in all fields, including politics. Therefore, the most appropriate role for Islam as a religion is to be the source or spirit of humanity and to guide people on the right path.¹⁷

Madjid's assessment of Islamism is similar to Abdurrahman Wahid's view. As the main figure of Nahdlatul Ulama, Wahid's firmness in maintaining Indonesia's democracy with Pancasila as its core has become common knowledge. For him, Pancasila and democracy are in accordance with the core of Islam, so that Indonesia does not need an Islamic state or an Islamic system. For example, the principle of Islamic justice is explicitly demonstrated in Pancasila because it is a framework that guarantees the rights of Muslims and non-Muslims in social and political matters.¹⁸

3. Struggles for Political Power

Since the fall of Suharto's authoritarian regime in 1998, some Islamist groups have demanded wider application of Sharia, not only limited to family law and economic law (banking), but also criminal law, even they demanded the Indonesian legal system based on Pancasila transform into an Islamic state system. In the early 2000s, the idea of re-implementation of Islamic law through the constitution surfaced again at the annual session of the People's Consultative

¹⁶ Gili Argenti et al., "Post-Islamism in Indonesia: Analysis of Islamic Political Party Programs in the 2019 National Elections," *Academic Journal of Interdisciplinary Studies* 11, no. 1 (2022): 127–36.

¹⁷ Nurcholish Madjid, "Keharusan Pembaruan Pemikiran Islam Dan Masalah Integrasi Umat," in *Islam, Kemodernan Dan Keindonesiaan*, ed. Nurcholish Madjid (Bandung: Mizan, 1998), 204–14.

¹⁸ Mujiburrahman, "Islam and Politics in Indonesia: The Political Thought of Abdurrahman Wahid," *Islam and Christian-Muslim Relations* 10, no. 3 (2007): 343–46.

Assembly (MPR) in 2001 with an agenda to amend the 1945 Constitution and raise the issue of the Jakarta Charter. This idea was brought back by the Islamic parties with the support of Islamist organizations. However, their proposal was once again rejected by the majority of MPR members who had the support of the largest Islamic organization in Indonesia, namely Nahdlatul Ulama (NU) and Muhammadiyah.¹⁹

Actually, the emergence of these demands is closely related to the rise of Islamic politics in the post-Suharto era.²⁰ The growth of Muslim groups that are considered radical is also an indication of the re-emergence of Islamic political ideology. This is because the political atmosphere at the time of the fall of Suharto's authoritarian regime was marked by political liberalization which gave everyone the opportunity to express their political views freely.²¹ Traumatic experiences in the New Order era have encouraged Muslims to establish political parties. Many Muslim political figures during the 32 years of the New Order regime had no place to express their aspirations; even they were slandered and accused of establishing an Islamic state. After the collapse of the New Order regime, Islamic political parties emerged with diverse agendas. Some moderates carry a substantial idealistic Islam, but there are also those who are fundamentalist Islamists. The issues offered by these Islamic parties are the enactment of Islamic law, improvement of the morality of society and the nation at large, as well as broader Islamic education and propagation (*da'wa*). These Islamic political parties follow the path of democracy in the Indonesian constitutional system. By utilizing the democratic system, Islamic political parties fight for their aspirations in the form of the application of Islamic law into the Indonesian legal system.²²

The fall of the Suharto regime in 1998 brought political liberalization and relaxation. This situation allows for the birth of a large number of political parties, among which are parties which have an Islamic social bases. Many mass organizations, including Islamist organizations, were founded and developed

¹⁹ Ahmad Rofii and Nadirsyah Hosen, "The Constitutionalization of 'Religious Values' in Indonesia," in *Constitutional Democracy in Indonesia*, ed. Melissa Crouch (Oxford: Oxford University Press, 2022), 241.

²⁰ Azyumardi Azra, "Political Islam in Post-Soeharto Indonesia," in *Islamic Perspectives on the New Millennium*, ed. Virginia Hooker and Amin Saikal (Singapore: ISEAS, 2004), 133.

²¹ Azra.

²² Sukardi Weda and Amiruddin Amiruddin, "Performance of Islamic Political Parties in Indonesian Contemporary Political Practices," *Randwick International of Social Science Journal* 3, no. 1 (2022): 211–30.

from the regional to the national level. Muslim organizations at that time were more vibrant than ever before and also engaged in activities in a broader field.²³ By utilizing the government's policy on regional autonomy, this Islamist group seized the opportunity to implement Islamic sharia by incorporating it into regional regulations through government elites and regional legislative bodies which sympathize to them.²⁴ In general, the implementation of sharia-based regional regulations rules three aspects, namely: (1) eliminating social diseases such as alcoholism, prostitution and gambling; (2) implementing observance of worship for Muslims such as Friday prayers, Ramadan fasting, zakat, and mastery of reading the Quran; and (3) regulating the way people dress in public, especially women who must wear the hijab.²⁵

As I mentioned above, in the reform era many Islamic parties, or parties based on Muslim support, emerged. This phenomenon is a reflection of the diversity of Muslims and the diversity of interests of Islamic groups. The emergence of Islamic parties is a form of political euphoria that is inevitable from the reform process. Many Islamic parties will automatically necessitate interacting with power and the state.²⁶ As a result, Islamic politics is confronted with several strategic choices, each of which contains consequences. The first choice is an accommodative strategy to the state power that often does not reflect Islamic idealism, with the consequence of accepting criticism from Muslim hardliners. The second option is an isolative opposition strategy, which is to reject and separate from the state power to build its own power, with the consequent loss of supporting factors, namely the state power, which can then be controlled and utilized by other groups. The third option is an integrative-critical strategy, which is to integrate Islamic politics into state power, but remains critical of the abuse of power. This choice is a form of struggle from within. However, this last strategy often deals with the hegemony of the state, so that the effectiveness of

²³ Greg Barton and Matteo Vergani, "Disengagement, Deradicalisation, and Rehabilitation," in *Countering Violent and Hateful Extremism in Indonesia. New Security Challenges*, ed. Greg Barton, Matteo Vergani, and Yenny Wahid (Singapore: Palgrave Macmillan, 2022), 63–82.

²⁴ Barton and Vergani.

²⁵ Sunny Tanuwidjaja, "Political Islam and Islamic Parties in Indonesia: Critically Assessing the Evidence of Islam's Political Decline," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 32, no. 1 (2010): 29–49.

²⁶ Asep Nurjaman, "Islamic Movements and the Future of Democracy in Post-Suharto Indonesia Era," *Hayula: Indonesian Journal of Multidisciplinary Islamic Studies* 7, no. 1 (2023): 33–50.

the Islamic political struggles will be questioned.²⁷

Islamic parties that support fundamentalist Islamic groups are ultimately not an option for most Indonesian Muslim communities. Even Islamic parties that have open platforms, such as the National Awakening Party (PKB) and the National Mandate Party (PAN), have a quite large number of followers, because these Islamic-based parties carry issues of Indonesianism and nationalism. Thus, as political developments coincide with efforts to democratize Indonesia, Islamic politics has also changed the direction of its aim to adjust these conditions. Islamic groups are more accommodating of democratic values and modernity, without having to leave their Islamic identity. Likewise secular parties are more accommodating of the aspirations of Muslims, even though their aim is to gain increased votes from Muslim groups. For the secular parties, Islam is only a rallying appeal to attract the masses. In doing so, the secular parties participate in voicing the interests of Islam. For this reason, today the difference between an Islamic party and a secular party is no longer significant. In terms of platform and leadership figures, it is difficult to find differences in Islam between Islamic parties and secular parties.²⁸

Since the independence until the reform era, not a single Islamic group has succeeded in bringing up the Islamic state movement in Indonesia. The issue of an Islamic state and *khilafa* (Caliph System) is not supported by the majority of Indonesian Muslims. In addition, Islamist groups who aspire to establish an Islamic state are difficult to unite, because they hold to their own different principles. Things that become different views in these groups are ranging from political practices to the way of *da'wa* (propaganda).²⁹

The attitudes of Islamist groups who accept the concept of democracy and support the unitary state of Indonesia have successfully restored relations between the state and Islam. This makes the Islamic parties get a good response from the public so they can join the executive power circles (the government). This is the first time that Muslim groups are in power. Islamic parties that enter

²⁷ Din Syamsuddin, "Dilema Politik Islam," in *Mengapa Partai Islam Kalah?*, ed. Hamdan Basyaib and Hamid Abidin (Jakarta: Alvabet, 1999), 31.

²⁸ Peter Suwarno, "The Role of Government Political Approaches in the Growth and Decline of Hardline Islamic Movements in Indonesia," *Jurnal Sosiologi Agama Indonesia (JSAI)* 3, no. 3 (2022): 215–35.

²⁹ Argenti et al., "Post-Islamism in Indonesia: Analysis of Islamic Political Party Programs in the 2019 National Elections."

into the sphere of power, supported by the voices of Islamic groups from outside, make secular parties more accommodating the interests of Islam. The colors of Islamization in the government and even Arabization in society have become increasingly prominent. These Islamic faces are seen, for example, in religious education in Indonesia. Teaching materials are less inclusive and public schools in Indonesia tend to require girls to wear headscarves. Islamization also occurs in the field of regulation / legislation which can influence public policy and can affect minority rights. The fact of the increasing number of sharia regional regulations in Indonesia is one example.³⁰

Although Indonesian Muslim communities accept the democratic system, they tend to have a “must Islam” paradigm, which has the most impact on regional elections. They use the verses of the Qur’an to urge the Muslim community not to elect potential non-Muslim leaders, as was the case in the Jakarta and North Sumatra Elections. In addition, the community became insulated mainly because of ethnicity, religion, races, and groups (the issue of the Communist Party / PKI is still circulating even though its movement has never been seen). Social intolerance has intensified, for example the rejection of graves of people of different religions at the village burial sites. Discrimination based on religion has also not faded, as is the fact that there is still rejection of houses of worship for non-Muslims. At least thirty-two churches and five Ahmadiyya mosques have been closed in the past five years. According to Human Right Watch data, there are 22 victims of blasphemy in the last five years, including Meiliana, who was jailed for 18 months for protesting the call to prayers.³¹ After the demonstration against former Jakarta Governor Basuki Tjahaya Purnama who was accused of insulting Islam, the prestige of the Islamic mass power has increased, so that attracting the voice of Islam is considered significant in general elections, both presidential and parliamentary elections.

According to Azyumardi Azra, currently Islamic conservatism in Indonesia is increasing. But that does not mean that it will strengthen radical Islamist groups or jihadists. The current conservatism, Azyumardi explains, is mostly caused by ‘humility’. For example, women wear the hijab, it is conservatism

³⁰ Argenti et al.

³¹ Faizal Risdianto, Sumarlam Sumarlam, and Noor Malihah, “The Representation of Power in the Text News on the Meiliana Case (A Norman Fairclough Critical Discourse Analysis),” in *Proceedings of the International Seminar on Recent Language, Literature, and Local Cultural Studies (BASA 2018)* (Atlantis Press, 2018).

because of humility, they feel better and comfortable wearing the hijab, but they do not have any political connotation. They still chose Pancasila as the basis of the Indonesian state, not Islamist ideology. Azyumardi Azra divides Islamic conservatism into three categories. The first is conservatism because of humility. The second is conservatism that wants to return Islam to pre-modern era, such as supporters of polygamy, and the rule of women not to go outside the house, and the use of products labeled as halal or sharia. The third category is conservatism that wants to change the political system in a peaceful or violent way.³²

Conservatism in contemporary Indonesia is not a conservative form of politics, but is conservative in religion, which is to uphold traditional Islamic principles based on the practices of Muslims at the time of the Prophet, including the selection of products labeled as sharia or halal. Nevertheless, the conservative religious style of Muslim society is also a major concern of political and government elites, so that the aspirations absorbed from Muslim society into government policies are aspirations that tend to be conservative. One example is the amendment of Law No. 38/1999 to Law No. 23/2011 concerning zakat management. Under the new zakat law, the government as a policy maker centralizes zakat management on the basis of sharia that zakat management is a state obligation. This policy has marginalized the community-owned zakat management institutions.³³ The influence of the conservatism of political elites towards public policy is discussed below.

4. The Rise of Sharia Laws

Even though the population of Indonesia is Muslim majority, the 1945 Constitution does not mention Islam as the official state religion whose doctrine must be followed by the state. Even the 1945 Constitution does not mention sharia as a source of law in legislations. Historically, several attempts have been made to include Islamic Sharia through the constitution – such as the seven words in the Jakarta Charter “with the obligation to carry out Islamic Sharia for its adherents” – have always failed.³⁴ Instead of explicitly privileging Islam

³² Azyumardi Azra, “Islam, State and Religious Pluralism in Southeast Asia,” in *Congress of German Orientalist* (Munster, Germany, 2013), 23–27.

³³ Yusuf Wibisono, *Mengelola Zakat Indonesia: Diskursus Pengelolaan Zakat Nasional Dari Rezim Undang-Undang Nomor 38 Tahun 1999 Ke Rezim Undang-Undang Nomor 23 Tahun 2011* (Jakarta: Kencana, 2016).

³⁴ The first attempt was during Indonesia’s independence, which failed and gave birth to Pancasila

in the constitution, Indonesia adopted Pancasila as the state ideology. The first principle of Pancasila, Belief in the one and only God, embodies state recognition of the formal role of religion in national life. Therefore, the state has never been completely separated from religion since the founding of the Republic of Indonesia in 1945. The government plays a role in the administration of religious affairs through the Ministry of Religion, which was established on January 3, 1946, although in principle religious matters are a personal matter for every religious adherent.

The Republic of Indonesia's Constitution does not explicitly mention or privilege certain religions. Since the first day of Indonesian independence, declared on 17 August 1945, the Indonesian state has restricted the formal position of Islamic law in the national legal system. It seeks to limit and neutralize Islam as a source of legal obligations and legal authority that is independent of, and perhaps even in competition with, the State.³⁵ For this reason, the boundaries of the religion-state relationship in this country are often unclear and complex, especially in terms of policies and laws governing religious life, and it seems that these policies favor the dominant religion and their adherents, namely Islam and Muslims. The Indonesian government has managed to allocate some 'space' to Islamic law (sharia) within the Indonesian legal and administrative systems. The government administers aspects of Islam through the Ministry of Religious Affairs.³⁶ Unclear constitutional arrangements about Islam in the Indonesian Constitution provide a way for interpretation (especially by the Ministry of Religion) that the state has constitutional obligations to intervene in the administration of religion and to apply religious doctrine; and in the case of Islam, to 'bureaucratize' the sharia.³⁷ This further complicates the

without mentioning Islamic law. While the last attempt also failed during the reform period from 1999 to 2002, when the United Development Party (PPP) and the Crescent Star Party (PBB) proposed to amend Article 29 of the 1945 Constitution by re-entering the 'seven words' of the Jakarta Charter. The two largest Islamic social organizations in Indonesia, Nahdlatul Ulama and Muhammadiyah, which supported the Islamic state in 1955 through the Masyumi party, saw the incorporation of formal sharia into the Constitution as unnecessary. This attitude is reflected in the two parties in the DPR connected to the two organizations, namely the National Awakening Party (PKB) and the National Mandate Party (PAN), when both parties rejected proposals to include 'sharia' in Article 29 of the 1945 Constitution. Nadirsyah Hosen, "Religion and the Indonesian Constitution: A Recent Debate," *Journal of Southeast Asian Studies* 36, no. 3 (2005): 419-40.

³⁵ Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Legal Studies Research Paper* 10, no. 70 (2010), <http://ssrn.com/abstract=1650432>.

³⁶ Butt.

³⁷ Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in

implementation of the distinction between religious doctrines that require state intervention for implementation and those that do not.

After the establishment of the Indonesian Constitutional Court in 2003, Indonesian citizens can sue the constitutionality of laws passed by the legislature before the Court (judicial review). With regard to cases involving Islamic religion, there are three categories that can be distinguished for judicial review of state involvement in matters of Islamic religion, namely when state law: (1) contradicts the interpretation of a problem under sharia; (2) interference in Islamic administration; and (3) interference in the administration of religious affairs in general in Indonesia.³⁸ The first category mainly concerns the judicial review of the provisions contained in Law No. 1 of 1974 on Marriage, for example concerning the issue of limiting polygamy marriages, and the prohibition of interfaith marriages. The second category deals with questions about the jurisdiction of the Religious Courts, Hajj bureaucratization, zakat management, and certification of halal products. The third category relates to the blasphemy law, which is quite controversial, so this becomes a test for the neutrality of the Constitution against all religions in Indonesia.³⁹

This development raises fundamental questions about whether the vague constitutional recognition of Islam expressed in the Constitution has prompted the government to make policies or enact laws that favor Islam and discriminate against other religions and their adherents in Indonesia. Experts have observed that the state, through the Ministry of Religion during the authoritarian Suharto regime (1966-1998), had a role in practices that discriminated against other recognized religions, minority groups such as unrecognized religions,⁴⁰ adherents of traditional beliefs, and religious sects considered deviant.⁴¹ The Ministry of Religion is also claimed to have been used by Islamist groups to incorporate the agenda of the Islamic state in Indonesia by including sharia in the country's policies and laws.⁴² Apart from its general nomenclature, the Ministry

the Administration of Islam?," *Asian Journal of Comparative Law* 13, no. 2 (2018): 389-413.

³⁸ Alfitri.

³⁹ Alfitri.

⁴⁰ Melissa Crouch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (London: Routledge, 2014).

⁴¹ Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," *Asian Journal of Comparative Law* 3, no. 1 (2008): 1-27.

⁴² Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton, New Jersey: Princeton University Press, 2000).

of Religion has become the leading bureaucratic institution to accommodate Islamic affairs.

The trend in the post-reform era until now is that there have been many cases of state intervention in Islamic religious affairs, and even as if state affairs and religious affairs are no longer dichotomous. Increasingly, religious issues—especially Islamic affairs—are regulated and managed by the state. In addition, experts consider constitutional practices in Indonesia to be more Islamic or at least show a tendency to prioritize Islam over other religions. This can be seen from the fact that the national legislature and executive have also enacted laws, applicable only to Muslims, which explicitly purport to incorporate Islamic legal norms into national law. They have also passed laws that, while not making direct reference to Islam, appear to adopt concepts or principles widely associated with more conservative varieties of Islam. The substance of the former category of laws is primarily matters over which Indonesia’s religious courts have jurisdiction, including family, inheritance, and Islamic finance. These laws include the Compilation of Islamic Law (Presidential Decision No 1 of 1999), and statutes on Islamic finance, including Law No 21 of 2008 on Syariah Banking and Law No 19 of 2008 on Syariah Securities. As to the latter category of laws, which appear to adopt, albeit not explicitly, Islamic norms, most controversial has been the Anti-pornography Law (Law No 44 of 2008), enacted in November 2008, which is said to reflect, albeit not explicitly, Islamic concepts of morality.⁴³

In addition to the above-mentioned sharia-based regulations, there is also law number 23 of 2011 concerning the management of zakat that adheres to the provisions of Islamic teachings that the management of zakat is the responsibility of the government, so that the zakat management institutions that are run by the community become marginalized. There are also the Halal Product Assurance Act (No. 33 of 2014) and the Hajj and Umrah Management Act (No. 8 of 2019) that confirm the role of the Ministry of Religion as an institution that organizes Muslim affairs.

The broad role of the state regarding Islamic regulation can be seen, for example, in the new Zakat Management Law, Law No. 23 of 2011 (the amendment to Law No. 38 of 1999). In the old Zakat Management Act (1999 version) the role of civil society was so extensive to manage zakat, because historically and

⁴³ Butt, “Islam, the State and the Constitutional Court in Indonesia.”

sociologically the management of zakat in Indonesia was almost entirely carried out by Muslim communities and became the backbone for Islamic preaching and education institutions. However, based on the new Zakat Management Act (2011 version) the role of civil society is very limited, because society-run zakat management institutions must be part of the government-owned zakat management institution. The community considers that the later law is a form of state domination of the philanthropic practice of Muslim communities by placing the government as the sole (central) actor in the management of zakat.⁴⁴ The contention over the ideas of managing zakat cannot be separated from the struggle of political ideology about efforts to expand the role of Islamic law in the national legal system, which is getting stronger. The argument proposed comes from the Qur'an and the practice of Islamic countries that carry the concept of welfare state, with the Ministry of Religion as a bureaucratic institution to accommodate Islamic affairs whose authority extends to various aspects of sharia that are recognized and regulated by the state. Other less well-known developments include the expansion of religious court jurisdiction to include disputes based on Islamic economic principles and the promulgation of a Compilation of Islamic Economic Law for use by the courts in deciding these cases.⁴⁵

This is also the case with the Law on Halal Product Assurance, a law whose formation process in the legislature has gone through a long period. Various groups were involved in formulation of the bill, both from elements of the government, legislature and civil society.⁴⁶ Debates inside and outside the legislature about the substance of the bill show the concern and interest of various parties. This struggle for influence was not only between the authorities, namely between the House of Representatives and the Government, but also civil society, which in this case was the Indonesian Ulema Council and other community organization groups.⁴⁷ This shows that the issue of halal product certification is not merely a religious issue, or the interests of consumers, but

⁴⁴ Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia* (Leiden: Brill Academic Publishers, 2013).

⁴⁵ Mark E. Cammack, "Discovering' Islamic Law," *Indonesia* 88 (2009): 165–73.

⁴⁶ Syafiq Hasyim, *The Halal Project in Indonesia: Shariatization, Minority Rights and Commodification* (Singapore: ISEAS-Yusof Ishak Institute, 2022).

⁴⁷ Moch. Nur Ichwan, "'Ulamā', State and Politics: Majelis Ulama Indonesia after Suharto," *Islamic Law and Society* 12, no. 1 (2005): 45–72.

also economic and political interests.⁴⁸

The role of the state in regulating Islam can also be seen in the law on the organization of the Hajj and Umrah pilgrimages. Previously, the management of the pilgrimage from time to time was carried out by various groups. However, due to the interests of several groups that could harm the pilgrims, in the end, the management of the Hajj was taken over by the government directly under the Directorate General of Islamic Community Guidance and Implementation of the Hajj, Ministry of Religion.⁴⁹ Policies regarding the organization of Hajj also do not mean that it does not cause problems, especially with regard to who can register to go on Hajj. In Kuningan district, West Java, the Ahmadiyya community has never received services from government officials, especially the Ministry of Religion. because Ahmadiyya is defined as a deviant and heretical sect, and it is even considered not the religion of Islam. However, Ahmadiyah adherents work around this by registering for the pilgrimage outside the Kuningan area.⁵⁰

In addition to the laws that have been passed, the government together with the legislature also proposed other laws originating from the principles of Islamic law. The government, for example, was proposing a draft law on criminal law, in which some provisions were derived from Islamic teaching norms, for example articles on adultery and cohabitation. The draft criminal law was intended as a substitute for the Dutch colonial Criminal Code, which is still in effect today. This draft criminal law was finally enacted into the Criminal Code, on December 6, 2022.⁵¹

Furthermore, the discussion of the draft law on the crime of sexual violence also received opposition from Islamic groups, especially from one of the Islamic factions in the House of Representatives, namely the Prosperous Justice Party. This Islamic faction assessed the sexual violence bill from the perspective of Islamic teaching norms. For example, the Prosperous Justice Party faction took issue with the phrase “consent to sexual intercourse”, focusing on the phrase

⁴⁸ Asep Saepudin Jahar and Thalhah Thalhah, “Dinamika Sosial Politik Pembentukan Undang-Undang Jaminan Produk Halal,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 12, no. 2 (2017): 387–404.

⁴⁹ Renotha Refenza, “Implementasi Undang-Undang Nomor 13 Tahun 2008 Tentang Penyelenggaraan Ibadah Haji,” *Qiyas: Jurnal Hukum Islam Dan Peradilan* 7, no. 1 (2022): 39–51.

⁵⁰ Mochamad Sodik, “Melawan Stigma Sesat: Strategi JAI Menghadapi Takfiri” (Universitas Gadjah Mada Yogyakarta, 2015).

⁵¹ Wardah Yuspin and Ajlin Ajlin, “History of the Implementation and Development of the Criminal Law (KUHP) of the Dutch Colonial Heritage in Indonesia,” *International Journal of Social Science Research and Review* 5, no. 9 (2022): 514–20.

“sexual consent”. This, according to the Prosperous Justice Party, should still be prohibited for those who are not officially married. The party also disputes the academic text of the bill, which explains sexual violence on the basis of different sexual orientation choices. Based on this, they considered that the bill supports adultery and LGBT. Moreover, this group also objected to the articles on forced abortions and forced marriages.⁵² The rejection made by the Prosperous Justice Party is based on a conservative view and considers that the bill is liberal in nature, so it is not in accordance with eastern norms and ignores Islamic religious values. However, the bill, which was initiated in 2012, was finally successfully passed into law on April 12, 2022, namely the Law number 12 of 2022 on sexual violence crimes.⁵³

5. Concluding Remarks

Religious authority and political power have long been bound together in Islamic history and tradition. This change in attitude is to some extent attributable to the fact that Islamic legal institutions have assumed greater prominence since the collapse of the Suharto regime in 1998. During the Suharto administration period, public advocacy for implementation of Islamic law occurred only when the regime invited it and then only within defined limits. With the opening of the political process following Suharto’s departure, debates over the role of Islam in the Indonesian state have revived, and major institutional and structural changes since 1999 have resulted in wider application of Islamic doctrine. During the democratization period in the reform era, many Islamic political and social organizations liberated themselves from hiding and even opened up their organizational philosophies to accommodate wider issues and concerns. While retaining their Islamic identity, some Islamic groups are turning towards the secularization of their goals and objectives as a means of adapting to the changing political environment. The development of Islamic politics in Indonesia in the aftermath of the reformation era accommodated democracy but still emphasized Islamic aspects. The government’s efforts to suppress Islamist groups in the past have changed the agenda of most Islamic

⁵² BBC, “RUU TPKS Disahkan Setelah Berbagai Penolakan Selama Enam Tahun, Apa Saja Poin Pentingnya?,” *BBC News*, April 12, 2022, <https://www.bbc.com/indonesia/indonesia-61077691>.

⁵³ Triantono Triantono et al., “Juridical Analysis of Law No. 12 of 2022 Concerning the Crime of Sexual Violence in the Perspective of Victim Protection,” in *Proceedings of the 1st International Workshop on Law, Economics and Governance* (Semarang: IWLEG, 2022).

political movements by Islamizing Indonesian values. For this reason, the color of legislations in Indonesia are more Islamic.

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