

Transformation and Future Challenges of Islamic Law in Indonesia

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Abstract

This study aims to investigate the transformation of Islamic law starting from pre-entry of Islam to Indonesia, entry of Islam, colonialism, and independence to current reformation in Indonesia, as well as various challenges to the formalization of Islamic law. The method used was a qualitative method with the type of library research namely by researching and reviewing legal materials that include primary legal materials, secondary legal materials, and tertiary legal materials that relevant to the object of this research. The results show that pre-entry of Islam to Indonesia, the applicable law was adat law, then since the entry of Islam into Indonesia, Islamic law has been well accepted and implemented by the community, and even its existence has gained legitimacy from both legal experts and the Dutch government. After Indonesia's independence, especially during the Old Order era, Islamic law did not transform significantly. During the New Order after such party collapsed, Islamic law began to transform significantly. Although since the reform period, Islamic law has transformed significantly, the challenges of Islamic law are serious, both internal and external. The most dominant internal challenges among are not fully codified Islamic law, Indonesian pluralistic condition, politics of the rulers' law, misconceptions of some legal experts about Islamic law, and other. Meanwhile, external challenges include influence of transnational ideologies which give a negative stigma against Islam,

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the development of Western ideologies that clash with Islamic law and the human rights, and strong influence of the domination of Western law in Indonesia.

Keywords: Transformation; Islamic Law; Custom Law; Western Law; Future Challenge

Introduction

In the last few decades, studies in the field of law in various aspects have attracted the attention of experts in various fields. In general, this study covers a lot of environmental problems¹, education², technology³, health⁴, economic⁵, family⁶, and even religion⁷. Some of these problems are studied because the essence of people's life is always interesting and dynamic, while if the law is not called static, it always requires adjustments to the development of community life, especially social life.

Social life is closely related to religion, especially for most groups in society, religion is an essential part and becomes the main foundation in living life. Even in state politics, there are several countries that make religion a system of government. For example, Saudi Arabia made the Qur'an and Sunnah as the constitution⁸, United Arab Emirates (United Arab Emirates), which in its governmental system states as an Islamic state based on the Qur'an and

¹Nicholas P. Cheremisinoff, "Environmental Laws and Regulatory Drivers," in *Handbook of Solid Waste Management and Waste Minimization Technologies* (Elsevier, 2003), 23–33, <https://doi.org/10.1016/B978-075067507-9/50003-6>.

²Bijetri Bose and Jody Heymann, "Do Inclusive Education Laws Improve Primary Schooling among Children with Disabilities?," *International Journal of Educational Development* 77 (September 2020): 102208, <https://doi.org/10.1016/j.ijedudev.2020.102208>.

³Unal Tatar, Yasir Gokce, and Brian Nussbaum, "Law versus Technology: Blockchain, GDPR, and Tough Tradeoffs," *Computer Law & Security Review* 38 (September 2020): 105454, <https://doi.org/10.1016/j.clsr.2020.105454>.

⁴James F. Thrasher, John C. Besley, and Wendy González, "Perceived Justice and Popular Support for Public Health Laws: A Case Study around Comprehensive Smoke-Free Legislation in Mexico City," *Social Science & Medicine* 70, no. 5 (March 2010): 787–93, <https://doi.org/10.1016/j.socscimed.2009.10.064>.

⁵Endang Retnowati, "Nelayan Indonesia dalam Pusaran Kemiskinan Struktural (Perspektif Sosial, Ekonomi dan Hukum)," *Perspektif* 16, no. 3 (May 27, 2011): 149, <https://doi.org/10.30742/perspektif.v16i3.79>.

⁶Hilal Mallarangan, "Pembaruan Hukum Islam dalam Hukum Keluarga di Indonesia," *Hunafa: Jurnal Studia Islamika* 5, no. 1 (April 15, 2008): 37, <https://doi.org/10.24239/jsi.v5i1.150.37-44>.

⁷Mun'im A. Sirry, *Membendung Militansi Agama: Iman Dan Politik Dalam Masyarakat Modern*, Seri Islam & Modernitas (Ciracas, Jakarta: Erlangga, 2003).

⁸Budi Harianto, "Sistem Ketatanegaraan Saudi Arabia Dalam Konteks Pergantian Kekuasaan Perspektif Siyasa Dusturiyah" (Universitas Islam Negeri Sunan Kalijaga, 2019), http://digilib.uin-suka.ac.id/37146/1/15370008_BAB-I_V_DAFAR-PUSTAKA.pdf.

Sunnah⁹ and so forth. The portrait of religion which is used as a system of government by the two countries, one of the factors is because the majority of the population is Muslim. Uniquely, Indonesia, as a country with the largest Muslim community in the world, does not make religion as a state constitution or as a system of government, in the sense of being an Islamic state. On the other hand, Indonesia does not claim itself as a secular state, which separates the relationship between religion and state in a dichotomous way. The relationship between religion and state in Indonesia can be seen in the first precepts in Pancasila and Chapter XI of the 1945 Constitution which are implicitly understood as a symbiotic-mutualistic relationship, such as two sides of a coin, which, although different, cannot be separated because they both need each other¹⁰.

However, the issues surrounding the application of Islamic law do not mean that they do not occur in Indonesia. There are many legal rules made by the government based on authoritative sources in Islamic law, such as the Islamic Law Compilation (KHI) which contains formulations on Islamic marriage law, Islamic inheritance law, Islamic Waqf Law and so on. Furthermore, Law Number 21 of 2008 which regulates Sharia Banking and Law Number 8 of 2019 specifically regulates the implementation of the Haj and Umrah pilgrimage. In addition, the government has also formed institutions that specifically handle various issues in the field of Islamic law, such as the Indonesian Ulama Council which, among others, has the authority to issue fatwas on the determination of halal certification and explore Islamic law on various other contemporary issues¹¹, Religious Courts / High Religious Courts whose duties are to examine and decide various cases involving Muslim parties in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and shari'ah economics¹², there is also the Office of Religious Affairs which has the authority, among other things, to regulate marriage administration for Muslim brides¹³, and many more.

⁹KBRI Abu Dhabi, "Kedutaan Besar Republik Indonesia Di Abu Dhabi Uni Emirat Arab," 2018, <https://kemlu.go.id/abudhabi/id/read/persatuan-emirat-arab/2307/etc-menu>.

¹⁰Ali Ismail Shaleh and Fifiana Wisnaeni, "Hubungan Agama dan Negara Menurut Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Pembangunan Hukum Indonesia* 1, no. 2 (May 29, 2019): 237–49, <https://doi.org/10.14710/jphi.v1i2.237-249>.

¹¹Mutimmatul Faidah, "Sertifikasi Halal Di Indonesia Dari Civil Society Menuju Relasi Kuasa Antara Negara dan Agama," *Islamica: Jurnal Studi Keislaman* 11, no. 2 (February 27, 2017): 449, <https://doi.org/10.15642/islamica.2017.11.2.449-476>.

¹²Suherman Suherman, "Kedudukan dan Kewenangan Peradilan Agama di Indonesia," *Al-Mashlahab Jurnal Hukum Islam Dan Pranata Sosial* 5, no. 09 (2017), <http://dx.doi.org/10.30868/am.v5i09.189>.

¹³Mufid Mukhorobin, "Efektivitas Tugas Dan Fungsi Pembantu Pegawai Pencatat Nikah Di KUA Kecamatan Sukorejo Kabupaten Ponorogo." (Sekolah Tinggi Agama Islam Negeri Ponorogo, 2016),

Interestingly, even though Indonesia has various legal products and institutions with Islamic nuances, this does not necessarily mean that Indonesia is a state with Islamic law or a country with Islamic ideology. This is because this country has a plurality of various aspects, both socially and religiously. The Indonesian nation consists of multiethnic, ethnic, cultural, linguistic, customs, beliefs, and even religions, which make every difference a strength with the slogan Unity in Diversity¹⁴ and based on the Pancasila ideology. Furthermore, because of the social and religious diversity that the Indonesian nation possesses, the legal system that applies in Indonesia is also diverse. Some people are subject to the Islamic legal system, others are subject to their respective customary law systems, and on the other hand they must also submit to the positive legal system (Western law). The three legal systems live in harmony, complement each other, and continue to develop in the midst of society. Islamic law affects the style of law in Indonesia because the majority of the population is Muslim, while customary law applies because it is an original law that grows and develops from the customs of society¹⁵. Meanwhile, Western law is also strong because Indonesia is a former Dutch colony. However, the study of how Islamic law was transformed starting from the era before Islam entered Indonesia, the colonial era, the era of independence which included the old and new order era and the current reform era is rarely studied by a small number of experts. Therefore, it is very important to investigate the transformation of Islamic law in Indonesia from time to time.

This study is very important, because Indonesia is currently trying to reform national law, while Islamic law is a part or sub-system of national law. Therefore, Islamic law needs to be used as an object of study, so that the national legal reform agenda also includes the notion of reforming Islamic law itself, taking into account various factors and challenges in Islamic law which can be transformed into reforming national law, so that future national legal products are born that are responsive, adaptive, and dynamic.

The author does not deny studies of the transformation of Islamic law from previous researchers, for example, the research entitled "Transformation of Islamic Law on Indonesian Society" written by Hesti Nur Hidayah and Ashif Az Zafi in the Journal of Reformasi Hukum Vol. 24 No. 2 of 2020, this study

<http://etheses.iainponorogo.ac.id/1404/1/Mufid%2C%20Abstrak%2C%20BAB%20I-IV%2C%20DP.pdf>.

¹⁴Parsudi Suparlan, "Bhinneka Tunggal Ika: Keanekaragaman Sukubangsa Atau Kebudayaan?" *Antropologi Indonesia* 0, no. 72 (July 24, 2014), <https://doi.org/10.7454/ai.v0i72.3472>.

¹⁵Zaka Firma Aditya, "Romantisme Sistem Hukum Di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 1 (May 15, 2019): 37, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

confirms that with the transformation of Islamic law in Indonesia in the form of the Compilation of Islamic Law (KHI), the community already has positive laws that are following their beliefs and is expected to be able to resolve various problems faced by Muslim communities who have tended to argue because of differences opinion on an issue.¹⁶ Then study entitled "Transformation of Islamic Law in Indonesia" was written by Darussalam Syamsuddin in the journal *Al-Qadau: Peradilan dan Hukum Keluarga Islam*. This research results that the transformation and institutionalization of Islamic law in Indonesia cover the fields of culture, legislation and worship which are so clear in the midst of people's lives. it's just that the study of Islamic law in this research was carried out after Indonesia's independence.¹⁷ Another research related to the transformation of Islamic law is research written by Siti Qomariyah entitled "Transformation of Islamic Law in the National Legal System: Idealism and Reality". Research published in the journal *Penelitian* Vol. 11 No. 1 of 2014 results that the transformation of Islamic law can be carried out in many fields of law, both private and public law, both to form legal plurality and legal unification, both exclusively for Muslims and inclusively for all citizens.¹⁸ Based on these three studies, it is clear that there has not been any research that examines the transformation of Islamic law from time to time in a comprehensive and in-depth manner, starting from the period before Islam entered Indonesia to the current reformation period, along with the various challenges it will be faced in the future.

So this research focuses on examining the issue of whether the transformation of Islamic law in Indonesia can be carried out, and the extent to which Islamic legal theory and national legal theory allow this transformation to be carried out. For this reason, this research uses a socio-legal approach with descriptive qualitative methods, and the research paradigm used is the constructivism paradigm because this research is intended to produce a reconstruction of new thoughts or ideas. Among the theories used are the constitution theory and the accommodation theory.

Discussion

Transformation of Islamic Law in Indonesia

Before explaining the transformation of Islamic law in Indonesia, it is important to first understand the theory of constitution and the theory of

¹⁶ Hestinur Hidayah and Ashif Az Zafi, "Transformasi Hukum Islam Pada Masyarakat Di Indonesia," *Reformasi Hukum* 24, no. 2 (December 7, 2020): 114–29, <https://doi.org/10.46257/jrh.v24i2.118>.

¹⁷ Darussalam Syamsuddin, "Transformasi Hukum Islam Di Indonesia," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 2, no. 1 (2015): 1–14.

¹⁸ Siti Qomariyah, "Transformasi Hukum Islam Dalam Sistem Hukum Nasional: Idealisme Dan Realitas," *Jurnal Penelitian* 11, no. 1 (2014): 1–19.

accommodation used in analyzing the object of this research. The constitutional theory referred to in the political framework of Islamic law in Indonesia is the transformation of the values of religious law (Islam) into Indonesian national law, which is an obligation based on the state constitution to build a national legal system through a democratic constitutional mechanism. This constitutional theory is built based on the argument that structurally the 1945 Constitution places religion in a high position, by recognizing the idea of Belief in One Almighty God in the life of society, nation, and state.¹⁹ The idea of a Supreme God is not only affirmed in the preamble of the 1945 Constitution but also becomes the first precept in Pancasila as the ideology and philosophy of the Indonesian nation. Meanwhile, the accommodation theory is built based on the argument that the state is obliged to accommodate all subsystems of national law into state legislation by using Islamic law as a benchmark for the law adopted by the majority of Indonesian society.²⁰ The wider adoption of Islamic legal values into the national legal system in various forms of legislation and existing legal institutions shows that there has been an agreement with legal awareness in Indonesian society.

Empirically speaking, the transformation of Islamic law in Indonesia cannot be separated from the long history of the founding of the Indonesian nation. It can be traced at least from the period before independence and the period after Indonesian independence. These periods, if examined further, have 3 main phases. There are 3 phases before Indonesia's independence, namely the period before Islam came to Indonesia, the period after Islam came to Indonesia, and the colonial period in Indonesia. Meanwhile, the 3 phases in the period after Indonesian independence are the old order period, the new order period, and the reformation period until now.

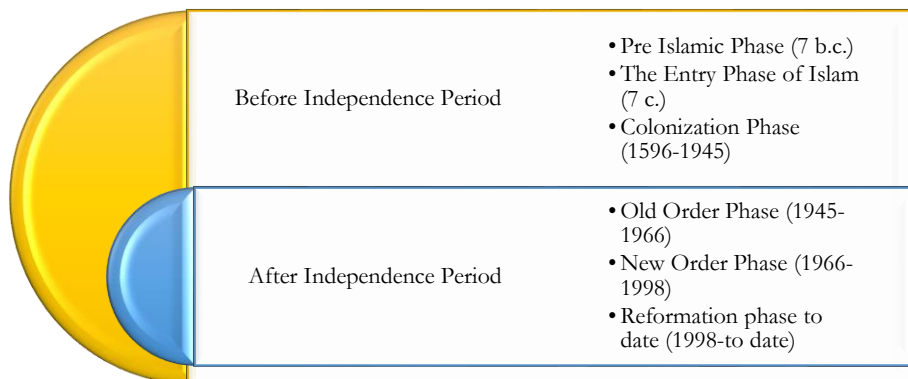


Figure 1. Period of Transformation of Islamic Law in Indonesia

¹⁹ Abdul Halim, "Membangun Teori Politik Hukum Islam Di Indonesia," *Ahkam* XIII, no. 2 (2013): 259–70.

²⁰ Halim.

In the pre-Islamic period, based on a series of research results conducted by experts, it was stated that the people of the archipelago had shared values and norms that were respected and obeyed in the form of customs and / or customary regulations which were varied and very diverse in nature and form. These customary regulations have existed since the time before Hinduism from Gujarat India entered Indonesia. According to experts, the customs that lived and prevailed in the archipelago at that time were Polynesian Malay customs ²¹. In line with this view, G.A. Wilken and C. Van Vollenhoven stated that before the arrival of “import” religions to Indonesia, such as Islam, Christianity, Hinduism, Buddhism, and Confucianism, rules based on adat were deeply rooted in rural areas, and even community loyalty to adat. very high ²².

When Islam entered and spread to various regions in Indonesia, Islamic law was followed and implemented by its adherents. This means that Islamic law was only known by the public when Islam was spread in Indonesia and the Islamization process took place peacefully. Not found in various manuscripts or reports stating that Islam was spread by means of revolutionary or violent means, but through a cultural approach by making a series of adaptations with the local social culture which is already deeply rooted, so that slowly Islam can be well accepted by the people of the archipelago ²³. Based on the results of the Seminar on the Entry of Islam in Indonesia which was held in Medan in 1963, it is known that Islam entered Indonesia in the 1st century Hijriyah or 7/8 AD ²⁴. The peak of the practice of Islamic law in the archipelago occurred when Islamic kingdoms emerged, such as the Kingdom of Samudera Pasai in the 13th century AD, which was followed by the Kingdom of Demak (1500 AD), Aceh Darussalam (1514), Banten (1568), and other kingdoms. The scholars in this era were given positions as advisors to the king and held various religious positions with different levels and names in each region ²⁵. One of the many evidences regarding the acceptance of Islamic law in Indonesia is the adoption of the Syafi'i school in the Pasai Kingdom area, the existence of a religious court institution in the Cirebon Papakeum (Kitab), the Penghulu Court in Java, the Syari'ah Court in the Islamic Sultanate in Sumatra, and the Qadli Court in the

²¹Hilman Syahril Haq, *Pengantar Hukum Adat Indonesia* (Klaten: Lakeisha, 2020).

²²Ratno Lukito, *Pergumulan antara hukum Islam dan adat di Indonesia*, INIS 35 (Jakarta: INIS, 1998).

²³Moch. Arif Budiman, “Melacak Praktik Pengelolaan Zakat Di Indonesia Pada Masa Pra-Kemerdekaan,” *Khazanah: Jurnal Studi Keislaman Dan Humaniora* 3, no. 1 (2005), <http://dx.doi.org/10.18592/khazanah.v3i1.3160>.

²⁴Ahmad Azhar Basyir, “Hukum Islam Di Indonesia Dari Masa Ke Masa,” *Unisia: Jurnal Ilmu-Ilmu Sosial* 16, no. Tahun XIII Triwulan V (1992), <https://doi.org/10.20885/unisia.v0i16.5599>.

²⁵Dahlia Haliah Ma'u, “Eksistensi Hukum Islam Di Indonesia (Analisis Kontribusi Dan Pembaruan Hukum Islam Pra Dan Pasca Kemerdekaan Republik Indonesia),” *Jurnal Ilmiah Al-Syir'ah* 15, no. 1 (January 3, 2018), <https://doi.org/10.30984/as.v15i1.471>.

Sultanate of Banjar and Pontianak²⁶. In addition, in the Palembang and Banten sultanates, there are several books of Islamic law which are used as normative references in resolving various legal cases that occur. This means that factually, Islamic law has its own position in the social life of Indonesian society²⁷.

Furthermore, during the early days of the Dutch arrival to the archipelago (1596-1945), the existence of Islamic law as a living law in the midst of society was recognized by a Dutch legal expert named Van den Berg, with his *receptio in complex theory* which stated that the applicable law in Indonesia was law in accordance with the religious beliefs of its adherents²⁸. For Muslims, the applicable law is Islamic law, while for those who are non-Muslim, the applicable law is the law in accordance with their religion. Even Islamic law once gained the legitimacy of its implementation positively during the VOC period on May 25, 1670, namely the publication of the Freijer Compendium resolution which contained a compilation of Islamic law consisting of marriage law and inheritance law²⁹. However, when the Dutch viewed Islam as a religion capable of destroying its political ambitions in the archipelago, it created various pressures and policies that were very detrimental to Islam itself. The Netherlands deliberately collides customary culture with Islamic teachings, but that does not mean that the Netherlands defends customary law for the benefit of the indigenous community, but only as a means of politicizing to perpetuate power in its colony³⁰. The conflict approach between customary law vis a vis Islamic law is what causes the harmony between the two legal systems to be disturbed.

Entering the beginning of the 19th century with the end of VOC control and the start of direct rule by the Kingdom of the Netherlands, Islamic law gradually began to be castrated by the Dutch colonial authority through Staatsblad 1937 Number 116. This rule was the result of Ter Haar's recommendation, which contained, among others; Islamic inheritance law has not been fully accepted by the community, the authority of Raad Religion in

²⁶Muhammad Siddiq Armia, "Sumbangsih Kerajaan Muslim Indonesia Dalam Pengembangan Peradilan Islam: Analisis Historical Legal Approach," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan, Dan Pranata Sosial* 2, no. 2 (2017), <http://dx.doi.org/10.22373/justisia.v2i2.2653>.

²⁷A. Malthuf Siroj, *Pembaruan Hukum Islam Di Indonesia: Telaah Kompilasi Hukum Islam*, Cetakan II (Kalangan, Yogyakarta: Pustaka Ilmu, 2017).

²⁸Ma'u, "Eksistensi Hukum Islam Di Indonesia (Analisis Kontribusi Dan Pembaruan Hukum Islam Pra Dan Pasca Kemerdekaan Republik Indonesia)."

²⁹Arso Sastroatmodjo A. Wasit Aulaw, *Hukum Perkawinan Di Indonesia* (Jakarta: Bulan Bintang, 1975).

³⁰Muhammad Roy Purwanto Atmathurida, Giyanto, "Hukum Islam Dan Hukum Adat Masa Kolonial: Sejarah Pergolakan Antara Hukum Islam Dan Hukum Adat Masa Kolonial Belanda," *An-Nur: Jurnal Studi Islam* 1, no. 2 (2005), <https://dspace.uui.ac.id/handle/123456789/4390?show=full>.

inheritance cases is revoked and transferred to Landraat, Raad Religion is under Landraat's supervision, and decisions of religious courts cannot be implemented without *executoirverklaring* from the head of Landraat³¹. In addition, Dutch support for the implementation of Islamic law was limited to issues in the family sector, including disputes between Muslim husbands and wives, various cases such as marriage, divorce, and reconciliation between Muslims who need Islamic religious judges, and dowry case. Meanwhile, the issue of grants, endowments, inheritance, wills, *hadhanah*, *sadaqah*, *baitul mal*, which was originally part of the authority of the religious court, has been changed to become the authority of the general court.³² This is supported by the *receptie* theory of Dutch customary law experts named S. Hurgronje and C. van Vollenhoven. According to them, the law that lives in Nusantara society is customary law which has been inherited from generation to generation, not Islamic law. In fact, according to S. Hurgronje, Islamic law can only apply when it has been accepted by customary law and becomes customary law. This is based on his research on the Islamic community of Aceh and Gayo that what applies to them is not Islamic law, but customary law. Even though customary law has the influence of Islamic law, this influence will have legal force if it has been accepted by customary law³³. So, what determines whether or not Islamic law will apply is customary law. This theory was responded critically by Hazairin, an expert on customary law and Islamic law from Indonesia by saying that the theory of *receptiveness* is a devil's theory, because it invites Muslims to disobey the commands of Allah SWT and the Sunnah of the Prophet SAW. He then argued that customary law could only apply if it did not conflict with Islamic law. Customary law that is not in line with Islamic law must be rejected, issued and/or opposed. This opinion is hereinafter referred to as the *receptie a contrario* theory³⁴.

Approaching the seconds of Indonesia's independence, Islamic leaders in BPUPKI struggled to place Islamic law in its original position, namely before the arrival of the Dutch to Indonesia and sought to make Islamic law exist in the archipelago. This struggle, among other things, resulted in the draft of the Constitution with the Jakarta Charter as its *muqaddimah*. The seven words contained in the Jakarta Charter "... with the obligation to carry out Islamic law for its adherents" are clear evidence that Muslims in Indonesia have strong ties to Islamic law. However, the seven words in the Jakarta Charter were deleted and not used after compromising and for the sake of maintaining the integrity of

³¹Aditya, "Romantisme Sistem Hukum Di Indonesia."

³²Ma'u, "Eksistensi Hukum Islam Di Indonesia (Analisis Kontribusi Dan Pembaruan Hukum Islam Pra Dan Pasca Kemerdekaan Republik Indonesia)."

³³Mohammad Daud Ali, *Asas-asas hukum Islam: hukum Islam I: pengantar ilmu hukum dan tata hukum Islam di Indonesia* (Jakarta: Rajawali Pers, 1991).

³⁴Ma'u, "Eksistensi Hukum Islam Di Indonesia (Analisis Kontribusi Dan Pembaruan Hukum Islam Pra Dan Pasca Kemerdekaan Republik Indonesia)."

the nation, so that at the time of the proclamation of Indonesian independence the formula used was "God Almighty"³⁵.

Since the Indonesian nation declared its independence on August 17, 1945, there has been a spirit to leave the Dutch product law. This nation wants to have a legal product that is based on the values that live in society, including applying sharia or Islamic law. However, the formalization of Islamic law in the form of positive law has never received a clear political agreement. This is due to the absence of an understanding of the nature of Islamic law in terms of its application. Some groups want the application of Islamic law in a formal, legal manner, while others want Islamic law to apply substantially and become a source of positive national law. Therefore, in every period of post-independence Indonesian government to date, there are legal products that contain Islamic legal values in principle³⁶. For example, during the Old Order Government (1945-1966) there was a Government Decree No. 1 / S.D. January 3, 1946 which legalized the establishment of the Ministry of Religion. According to R. Moh. Kafrawi, the formation of the Ministry of Religion resulted from the original Indonesian formula which contained a compromise between two face-to-face concepts, namely the Islamic system which required a union between religion and state and a secular system which wanted a separation between the two.³⁷ In addition, Law Number 22 of 1946 concerning Registration of Marriage, Divorce and Referral was also issued and to implement and implement the Law the state then issued Instruction of the Minister of Religion Number 4 of 1947 concerning the Appointment of Marriage Registration Employees (PPN).³⁸ Several years later, in 1954 to be precise, Law no. 32 of 1954 concerning the Enactment of the Law of the Republic of Indonesia on 21 November 1946 Number 22 of 1946 concerning the Registration of Marriage, Divorce and Referral in all areas outside Java and Madura³⁹. In 1957, the

³⁵Aris Rauf & Muhammad Sabir, "Transformasi Hukum Islam Dalam Bentuk Al Uqubah: Penerapan, Prospek Dan Tantangan Pemberlakuan Hukum Pidana Islam Di Indonesia," *Al'Adalah: Jurnal Syari'ah Dan Hukum Islam* 5, no. 2 (2020), <https://doi.org/10.31538/adlh.v5i2.789>.

³⁶Muhsin Aseri, *Hukum Islam Di Indonesia (Politik Hukum Orde Lama Hingga Reformasi* (Banjarmasin: Pascasarjana UIN Antasari, 2020), <http://idr.uin-antasari.ac.id/14689/1/Dr.%20H.%20Muhsin%20Aseri%2C%20M.Ag.%20M.%20H..pdf>.

³⁷Kementerian Agama RI, "Sekilas Tentang Kementerian Agama," *Sekilas Tentang Kementerian Agama* (blog), 2021.

³⁸Ahmad Rajafi, "Hukum Keluarga Islam Di Indonesia: Dari Orde Lama Hingga Orde Reformasi," *AL-'ADALAH* 14, no. 2 (December 30, 2018): 311, <https://doi.org/10.24042/adalah.v14i2.2059>.

³⁹Ahmad Rajafi, "The Renewal Movement of Islamic Family Law In Indonesia (Politics of Islamic Law from Old Order until Reformation)," in *1st Biennial Conference on Sharia and Social Studies 2017* (Proceeding, 2017), https://www.researchgate.net/profile/Ahmad-Rajafi/publication/322498838_The_Renewal_Movement_of_Islamic_Family_Law_in_Indonesi_a_Politics_of_Islamic_Law_from_Old_Order_until_Reformation/links/5a5c3f280f7e9b5fb38c

Government Regulation no. 45 of 1957 which formulated the formation of the Religious Courts / Sharia Courts throughout the territory of the Unitary State of the Republic of Indonesia. Then in the following years between 1960 and 1966, the politics of Islamic law in Indonesia did not change too much, because at that time the domination of the communist party was quite strong, in addition to the political leadership of Soekarno and Suharto.⁴⁰

Entering the New Order era (1966-1998), voices against the reform of Islamic law were increasingly widespread and were often discussed by various groups of society, both in the form of seminars, symposia, and entering the legislative domain. The era of Soeharto's government gave birth to Law no. 14 of 1970 concerning Basic Provisions of Judicial Power which place the Religious Court as one of the state court institutions, apart from the District Court, Military Court, and State Administrative Court. In subsequent developments, Law Number 7 of 1989 concerning Religious Courts was issued which specifically placed the Religious Courts within the national legal system and order as a whole. Then in 1974, Law no. 1 of 1974 concerning Marriage, which in the process of its formation since the Old Order until it succeeded in becoming *lex positiva* during the New Order era went through quite complicated political struggles. This is due to the influence of de-Islamization of Islamic law on the one hand and the formalization of Islamic law on the other⁴¹. This was followed by the issuance of Implementing Regulations for the Marriage Law, namely Government Regulation (PP) Number 9 of 1975 which regulates the formulation of marriage registration, procedures for implementing marriage, procedures for divorce, and other issues related to marriage issues. In 1991, the struggle of Muslims continued to form legal products that were in line with their beliefs and was proven by the presence of a material law called the Islamic Law Compilation (KHI) which was contained in Presidential Instruction No.1 of 1991 concerning the Dissemination of Islamic Law Compilation (KHI). Historically, the idea of the Compilation of Islamic Law (KHI) emerged from the elite circles of power which was motivated by the judicial technical problems of the religious courts⁴² in order to realize legal certainty. This means that in the practice of examining cases at the Religious Courts prior to 1991, judges referred to various sources of Islamic law, so that their decisions created legal uncertainty. Therefore, in a material way, the preparation of the provisions of the formulation in the Islamic Law Compilation (KHI) refers to approximately

d1e2/The-Renewal-Movement-of-Islamic-Family-Law-in-Indonesia-Politics-of-Islamic-Law-from-Old-Order-until-Reformation.pdf.

⁴⁰Aseri, *Hukum Islam Di Indonesia (Politik Hukum Orde Lama Hingga Reformasi)*.

⁴¹Siroj, *Pembaruan Hukum Islam Di Indonesia*.

⁴²Siroj.

13 classical fiqh books and until now it is still used as a guideline for judges in deciding cases submitted to him in the Religious Court⁴³.

When the Reformation order rolled around (1999-present), efforts to form positive law based on Islamic law continued to grow, but it was still partial and only focused on civil issues. In an era that began with the leadership of B.J. Habibie was born in Law no. 17 of 1999 concerning the Implementation of Hajj, Law no. 38 of 1999 concerning Zakat Management. During this period, Law no. 44 of 1999 in conjunction with Law no. 18 of 2001 in which the government gave special autonomy to the Special Region of Aceh to implement Islamic law in all its territories⁴⁴.

At the annual session of the People's Consultative Assembly (MPR) in 2000, several Islamic political parties continued to fight for efforts to enforce Islamic law through legislative institutions, such as the Bulan Bintang Party (PBB), the United Development Party (PPP), and the Prosperous Justice Party (PKS). However, their efforts failed, because their cumulative number of votes was only about 15% of the total votes of members of the DPR, while most members of parliament rejected the application of Islamic law in Indonesia⁴⁵. However, in the following years, Muslims have succeeded in fighting for several laws and regulations that are closely related to the interests of Muslims, such as Law no. 41 of 2004 concerning Waqf, Law no. 3 of 2006 which increases the authority of the Religious Courts, Law no. 19 of 2008 concerning State Sharia Securities, Law no. 21 of 2008 concerning Islamic Banking, Law no. 23 of 2011 concerning Zakat Management, and Law no. 8 of 2019 concerning the Implementation of Hajj and Umrah Worship. In addition, as a consequence of the existence of Law no. 22 of 1999 in conjunction with Law no. 32 of 2004 in conjunction with Law no. 23 of 2014 concerning Regional Government, increasingly opens up opportunities for the application of Islamic law in various regions. This phenomenon can be seen, for example, from the birth of several regional regulations with Islamic nuances, such as Perda No. 3 of 2002 concerning the Prohibition, Supervision, Issuance and Sales of Liquor in

⁴³Nurul Ma'rifah, "Positivisasi Hukum Keluarga Islam Sebagai Langkah Pembaharuan Hukum Islam Di Indonesia: Kajian Sejarah Politik Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (November 28, 2019): 243–57, <https://doi.org/10.24090/mnh.v13i2.2692>.

⁴⁴Kamaruzzaman Bustamam-Ahmad, "The Application of Islamic Law in Indonesia: The Case Study in Aceh," *Journal of Indonesian Islam* 1, no. 1 (June 1, 2007): 135, <https://doi.org/10.15642/JIIS.2007.1.1.135-180>.

⁴⁵Noorhaidi Hasan, "Islamic Militancy, Sharia, and Democratic Consolidation in Post-Suharto Indonesia," *Nanyang Technological University*, 2007, https://dr.ntu.edu.sg/bitstream/10220/4399/1/RSIS-WORKPAPER_118.pdf.

Bulukumba, South Sulawesi⁴⁶, Regional Regulation No. 30 of 2002 concerning Management of Zakat, Infaq, and Shadaqah in Bandung, Perda No. 18 of 2004 concerning the Prohibition of Prostitution and Perda No. 4 of 2014 concerning Al-Qur'an Reading Skills for Muslim students in Pamekasan⁴⁷, including Perda No. 2 of 2016 concerning Halal Tourism in West Nusa Tenggara Province, and so on. In fact, several regions that are making efforts to formulate similar perda to date which are still in the form of Regional Regulation Plans (Raperda) are still ongoing. Regions that have produced many legal products based on Islamic legal values in the form of regional regulations in Indonesia include Serang, Pandeglang, Tangerang Garut, Indramayu, Tasikmalaya, Gresik, Pamekasan, Bulukumba, Gowa, Sinjai, and Enrekang⁴⁸. Even on February 2, 2021, when President Jokowi issued Presidential Regulation No. 10 of 2021 concerning the Investment Business Sector, one of the formulations of which regulates the permissibility of investing in alcoholic beverages (alcoholic drinks) in 4 regions of Indonesia including Bali, East Nusa Tenggara, North Sulawesi, and Papua, a month after that the President withdrew the Presidential Decree after accepting lots of input from ulama, community organizations such as Nahdlatul Ulama, Muhammadiyah, the Indonesian Ulema Council, and so on, as well as a lot of rejection from the wider community towards the Perpres⁴⁹.

Based on the description above, it can be understood that Islamic law in its various forms, both regional laws and regulations or other regulations, practically in the context of governance in Indonesia is always intertwined with political dynamics in Indonesia, which has been influenced by the configuration of the political system in each. -Each period of government. This means that even though in every period of government, both the Old Order, the New Order, and the Reformation Order have created legal products based on Islamic legal values, because of the different political configurations, the character levels of the legal products are different. In addition, another important thing that needs to be realized together is how Indonesian Muslims in the future will be able to convince all parties to put Islamic law into a legal substance in the direction and policy of national law development in order to create responsive, populist, and acceptable legal development. all circles of Indonesian society⁵⁰.

⁴⁶Amril Maryolo AR, "Syariat Dan Perundang-Undangan: Proses Kebijakan Dan Konten Perda Keagamaan di Bulukumba," *Mazhabuna: Jurnal Perbandingan Mazhab* 1, no. 1 (2019), <https://doi.org/10.24252/mh.v1i1.9378>.

⁴⁷Nasrullah Ainul Yaqin, "Adakah Pengaruh Penerapan Syariat Islam Di Pamekasan Terhadap Lingkungan?: Studi Kasus Kerusakan Laut Di Desa Batukerbuy," *AL-IRFAN: Journal of Arabic Literature & Islamic Studies* 1, no. 2 (2018), <https://doi.org/10.36835/al-irfan.v1i1.3225>.

⁴⁸Muhyar Fanani, *Membumikan Hukum Langit: Nasionalisasi Hukum Islam Dan Islamisasi Hukum Nasional Pasca Reformasi* (Yogyakarta: Tiara Wacana, 2008).

⁴⁹Egi Adyatama, "Jokowi Cabut Lampiran Perpres Legalisasi Investasi Miras" (Jakarta, 2021).

⁵⁰Aseri, *Hukum Islam Di Indonesia (Politik Hukum Orde Lama Hingga Reformasi*.

With the existence of various forms of transformation of Islamic law in various forms of legislation and institutional products as explained above, in the future, Muslims must always develop an attitude or spirit of benefit among fellow citizens as a form of embodiment of the teachings of the Islamic religion which is *rahmatan lil'alam*, without promoting an Islamic state in the unitary state of the Republic of Indonesia.

Future Challenge of Islamic Law in Indonesia

The large number of legal products with Islamic nuances that are enforced in Indonesia further proves that Islamic law has become an integral part of the national legal system. However, the formal enforcement of Islamic law in Indonesia still needs further political support⁵¹. If we look closely, there are several factors that will challenge Islamic law in the future, both internal and external factors.

In general, internal factors include 1) some people do not understand the national legal system and the position of Islam in the life of the nation and state, 2) Islamic law is not codified, 3) the views of various experts regarding the nature of Islamic law, 4) weak understanding of scholars regarding the substance and philosophy of Islamic law, 5) there is no meeting point regarding the concept of actualization of Islamic law in Indonesia, 6) the culture of Indonesian society is very plural, and 7) low awareness of Muslims (political will) on the formalization of Islamic law.

Meanwhile, external factors that will challenge Islamic law in the future consist of 1) the influence of transnational ideologies that give a negative image to Islam, 2) the diversity of ideologies/ideologies that influence society regarding freedom and defense of human rights, 3) the strong influence of capitalists in various aspects of life that has an impact on politics and law in Indonesia, 4) the strong domination of western law in Indonesia, and 5) influence of information systems and technology.

⁵¹A. Malthuf Siroj, "Eksistensi Hukum Islam Dan Prospeknya Di Indonesia," *AT-TURAS: Jurnal Studi Keislaman* 5, no. 1 (September 23, 2018): 97–122, <https://doi.org/10.33650/at-turas.v5i1.326>.

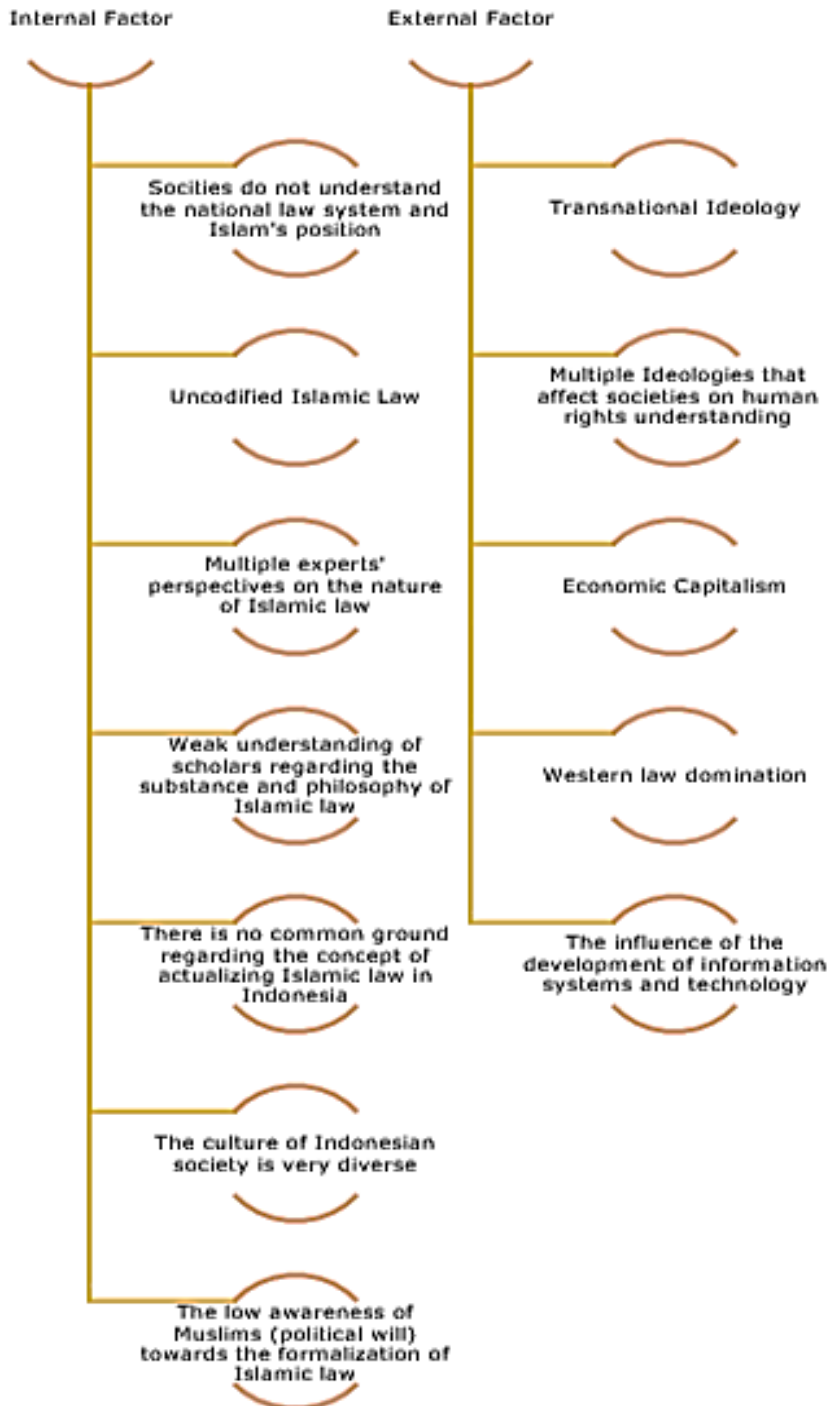


Figure 2. Challenges of Islamic law in Indonesia

The first internal factor is social jealousy from some people who do not fully understand the national legal system and the position of Islam in the life of the nation and state. This phenomenon can be seen from the concern of some parties about the emergence of Islamization in all aspects of the life of the nation and state and the shift of the Indonesian state ideology from a Pancasila state to an Islamic state⁵². Whereas the constitution guarantees every citizen to practice his religious teachings, as stipulated in Article 28 and Article 29 of the 1945 Constitution. In the opinion of the author, this concern is too excessive considering that Indonesia is a constitutional state and is based on the one and only Godhead.

Second, Islamic law is not codified in a particular book, but is scattered in various works of classical scholars, which are the works of Middle Eastern scholars and it is not uncommon for the texts in these books to cause very varied and even contradictory debates. For example, in the issue of leadership, some parties understand that leadership in Islamic politics must be based on the religion they adhere to, which must be a Muslim leader, while others are more inclined to characterize leaders who have an honest, transparent, disciplined and assertive attitude without considering religious beliefs. which he embraces⁵³. Likewise in the case of criminal sanctions, for example criminal sanctions for corruptors, some consider corruptors the same as the essence in Islamic criminal law that must be cut off, others consider corruption and sariqah not the same both in material and formal aspects, so that the sanction of cutting off their hands cannot be applied. and even the penalties can be heavier than cutting off a hand⁵⁴.

Third, there are different perspectives regarding the nature of Islamic law which have an impact on the implementation of Islamic law in the field. On the one hand Islamic law is identified with sharia and on the other hand Islamic law is identified with fiqh. This is triggered by several factors, among others; Islamic legal thought which is not only the domain of fiqh books, but is also contained in decisions of religious courts, fatwas of scholars, and in several laws and regulations in other Muslim countries⁵⁵.

⁵²Siroj.

⁵³Simon Butt, "Religious Conservatism, Islamic Criminal Law and the Judiciary in Indonesia: A Tale of Three Courts," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (September 2, 2018): 402–34, <https://doi.org/10.1080/07329113.2018.1532025>.

⁵⁴Firqah Annajiyah Mansyuroh, "Hukum Potong Tangan Bagi Koruptor (Kajian Ahkam Surah Al-Maidah Ayat 38)," *Dialogia* 17, no. 1 (June 26, 2019): 41, <https://doi.org/10.21154/dialogia.v17i1.1407>.

⁵⁵Hasyim Nawawie, "Hukum Islam dalam Perspektif Sosial-Budaya di Era Reformasi," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 8, no. 1 (June 3, 2013): 1–28, <https://doi.org/10.21274/epis.2013.8.1.1-28>.

Fourth, the lack of understanding of legal scholars regarding the substance and philosophy of Islamic law. This is because legal studies studied in various law faculties in Indonesia emphasize more on their understanding of Western legal theory, whose principles, principles and philosophies are very different from the culture of the Indonesian nation. Meanwhile, Islamic law is taught only as a complementary subject, not a compulsory subject, and even the content of the material taught is limited to qishas, stoning, and cutting hands which are a small part of a review of the substance of Islamic law which is so broad and complex.

Fifth, there is no meeting point regarding the concept of actualization of Islamic law in Indonesia. Some groups in society want the actualization of Islamic law directly by eradicating all kinds of immorality that occur. Some other groups use political struggle in a juridical constitutional manner, and there are also those who choose cultural struggles by fostering an understanding of Islamic law for the community⁵⁶. The first group of people prefers to create an Islamic state in Indonesia, because it is considered the best method for actualizing Islamic law. The second group emphasizes how Islamic law as a political product gets the most votes from all members of parliament, so that it can be enforced nationally. Meanwhile, the third group took to the field more to increase public awareness of their understanding of Islamic law and the emphasis was more on the consideration of the plurality of society itself, which if the implementation of Islamic law was enforced it would lead to divisions among the nation's children.

Sixth, the culture of Indonesian society is very diverse. This then led to resistance and rejection from various parties, especially the non-Muslim community who considered the formalization of Islamic law would make them second-class citizens in this country, as they rejected in the early days of independence for the 7 points in the Jakarta Charter⁵⁷. This plurality is also accompanied by a plurality of legal systems that apply in the midst of society, where some Indonesian people are subject to a customary law system which has very diverse forms. Some others believe in and obey the Islamic legal system because of the religious factors that the majority of Indonesian people adhere to. Besides, they also chose a positivistic Western legal system because it was considered to be more secure and provide legal certainty.

Seventh, the lack of awareness of the ummah (political will) of Islam towards the formalization of Islamic law. This is indicated by the low support of Muslims for Islamic political parties in the context of Islamic law legislation into

⁵⁶Ratni Kasmad, "Peluang Dan Tantangan Integrasi Nilai-Nilai Hukum Islam Dalam Sistem Hukum Nasional," *Maddika: Journal of Islamic Family Law* 1, no. 1 (2020), <https://doi.org/10.24256/maddika.v1i1.1714>.

⁵⁷Kasmad.

the National legal system. So that Muslims do not have the political power that is able to pass regulations as the basis for juridical enforcement of Islamic law in parliament.⁵⁸ As it is known, the formation of legal products in the context of the Indonesian state is carried out by an autonomous institution, in this case a legislative body. It is through the role of legislative members that Islamic law can be enforced or not. If the composition of members of the legislature is controlled by a secular group, then the legal products that are born tend to be secular, on the contrary, if the legislative members are dominated by groups that want Islamic law, then maybe Islamic law can be applied on a national scale.

Meanwhile, the first external factor that challenges Islamic law in Indonesia is the development of a transnational ideology that gives a negative image to Islam both locally and globally. On March 28, 2021, an action of theorist occurred again in Indonesia, a suicide bomb exploded in front of the Makassar Cathedral Church, South Sulawesi. This incident adds to the list of acts of terrorism that have occurred in several regions in Indonesia, such as in Bali, Surabaya, Solo and so on. Many parties identify these acts of terrorism with Islam because they are carried out by certain Islamic groups⁵⁹. This assumption is certainly increasingly cornering and damaging the image of Islam as a religion that has a vision of grace for the universe. In addition, the terrorist acts carried out by the ISIS group in several countries have also further exacerbated the face of Islam in the eyes of the world, such as ISIS claims which justify acts of terror in Brussels some time ago⁶⁰.

Second, there are many ideologies or ideologies that influence the mindset of some people regarding freedom and defense of human rights (HAM), especially Western interpretations of human rights. This is certainly a formidable challenge when it comes to the application of Islamic criminal law, which has been stigmatized as cruel, harsh and inhuman⁶¹. As is well known, the relationship between the West and Islam regarding human rights is an important issue because they both have different interpretations of human rights and seem to contain heated debates. Human rights in the Western perspective are only anthropocentric, humans are the full owners of these rights. As a consequence, the main values of Western culture such as democracy must be oriented to respect for humans, because everything is human-centered, the ultimate goal of the implementation of human rights is none other than the human being. While Islam interprets the concept of human rights as more theocentric, in this case

⁵⁸Topo Santoso, *Membumikan Hukum Pidana Islam: Penegakan Syariat Dalam Wacana Dan Agenda*, Cet. 1, Kajian Hukum Islam (Jakarta: Gema Insani Press, 2003).

⁵⁹Muhammad Subhan, "Pergeseran Orientasi Gerakan Terorisme Islam Di Indonesia (Studi Terorisme Tahun 2000-2015)," *Journal of International Relations* 2, no. 4 (2016).

⁶⁰Heck, "Images, Visions and Narrative Identity Formation of ISIS," *Global Discourse* 7, no. 2 (July 3, 2017): 244–59, <https://doi.org/10.1080/23269995.2017.1342490>.

⁶¹Siroj, "Eksistensi Hukum Islam Dan Prospeknya Di Indonesia."

humans are considered as creatures entrusted with basic rights by God, not as absolute owners. Therefore, he is obliged to maintain and use it according to God's provisions⁶².

Third, a new model of colonialism, especially to control the economy, which impacts on politics and law in Indonesia. Fourth, the strong domination of Western law in Indonesia has made scholars of Islamic law insecure and feel they do not have the authority to carry out *ijtihad* seriously on various problems that arise.⁶³ They even tend to prioritize fanaticism in religion and blind *taqlid*. These two attitudes are certainly dangerous for the future of Islamic law in Indonesia. On the one hand, religious fanaticism can threaten the spirit of national unity and integrity, on the other hand blind *taqlid* can make Islamic law in a static position and unable to adapt to the times.

Fifth, the rapid development of information systems and technology that quickly affects people's mindset and outlook on life on various matters, including matters related to religion, value systems, and so on⁶⁴. This is also supported by the easier and cheaper tools based on information technology and internet access. It must be admitted that social media has two opposing sides. Both have the same potential to repair and / or damage users, because the amount of knowledge in them is also comparable to information that can cause destructive power to anyone who accesses it.

Conclusion

Based on the explanation in the discussion above, it can be concluded that the Islamization process that occurred in Indonesia since the beginning of its entry took place peacefully and without coercion from any party. Even the existence of Islamic law as a living law has legitimacy from both Dutch jurists and the Dutch government itself. Even though in the middle to near the end of colonial rule, Islamic law came under a lot of pressure and interference because it was seen as a shackle to the political ambitions of the rulers. After Indonesia's independence, both the Old Order and the New Order tended to use the center of power as the main route in the implementation of Islamic law. Meanwhile during the Reformation Order, the application of Islamic law was mostly carried out in the regions in various forms of regional regulations and even the material did not only touch the public sphere such as liquor, prostitution and adultery, but also entered the private sphere, as read and write -Qur'an and the use of headscarves. Meanwhile, the challenges of Islamic law in Indonesia for the future consist of internal and external challenges. Internally, these challenges

⁶²Ahmad Kosasih, *HAM Dalam Perspektif Islam: Menyingkap Persamaan Dan Perbedaan Antara Islam Dan Barat* (Jakarta: Salemba Diniyah, 2003).

⁶³Ahmad Munir, "Tantangan Hukum Islam di Abad Modern," *Mimbar: Jurnal Sosial Dan Pembangunan* 18, no. 2 (2002), <https://doi.org/10.29313/mimbar.v18i2.70>.

⁶⁴Siroj, *Pembaruan Hukum Islam Di Indonesia*.

include the non-codification of Islamic law that it is not uncommon for the texts in these books to cause very varied and even contradictory debates, The condition of Indonesian society is plural, not only in terms of language, and ethnicity, but also religion, so that in the application of Islamic law, it causes a lot of rejection, the diversity of expert views on Islamic law so that there is no meeting point regarding the concept of actualization of Islamic law in Indonesia, and so on. Meanwhile, the external challenges of Islamic law include the influence of transnational ideologies that gives a negative image to Islam both locally and globally such as On March 28, 2021 an action of theorist occurred again in Indonesia, the diversity of ideologies that influence people's views on human rights, causing the stigma that Islamic law is always cruel, harsh, and inhumane, the strong domination of Western law in Indonesia has made scholars of Islamic law insecure and feel they do not have the authority to carry out ijtihad seriously on various problems that arise, and so on.

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