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State and Religion in the Perspective of Pancasila: Study Based on Shari'a Law

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Abstrak—Shari'a-based regimes if linked to the state and religion in Pancasila's perspective can be seen from the return of the Indonesian nation to the 1945 Constitution through the Presidential Decree if associated with the Jakarta Charter Manuscript. Indeed, the formal juridical can not be used as the basis for the validity of Shari'ah Islam in Indonesia. However, it has given place for the position of Shari'ah Islam in Indonesia, or at least provides a basis for the formation of national legislation based on Islamic Shari'ah. In other words there is an opportunity given by the constitution to be used by Muslims in the formation of national legislation based on Shari'ah Islam as long as it is not contrary to the rules of the above-mentioned shrimp.

Pancasila is the source of all sources of state law (fundamental norm of state/staatfundamental norm) or basic norm (graundnorm, basicnorm) which ranks highest at the top of the pyramid of the highest legal norms, followed by the 1945 Constitution, as well as unwritten basic law or constitutional convention as (Stelegraundgesetze), by law (formele gezeetz), as well as autonomous and autonome satzung rules of conduct and regulations starting from the Government Regulation, the Presidential Regulation and the Regional Regulation.

Key Words: State, religion, Pancasila and Sharia-based law.

1. Introduction

Sharia-based regulation, various reasons have been conveyed by counter parties to reject sharia-based regulation, among others that Sharia-based regulation is not entitled to regulate the privacy of Muslims in worship, Sharia-based regulation contrary

to the law Higher, Indonesia is a plural country not an Islamic state, contrary to Local Government Law, the law should be general and should not be partial and various other reasons.

Similarly, the pro-sharia-based parliaments, which argued that as the discourse of democratization, sharia-based regulation is part of the aspirations of local communities, so that each region is entitled to make the rules of the region's distinctive legislation. In addition, the existing legal regulation is considered not able to guarantee the enforcement of justice in society, so there is no harm in trying the enforcement of Islamic law is clearly more assertive and basically a part of the source of national law to apply to the community.

In addition to those who agree with the formal implementation of Shari'ah Islam in Indonesia has at least 3 (three) problems that are quite serious; (Kuriawan Zein, Sarifuddin, et Munthoha : 2010 ; 7) First, it deals with historical issues. Historically, the idea of formalizing Islamic Shari'a in state politics is not a new idea. The Islamic circles used to struggle seriously, as seen in the Jakarta Charter, which then became a milestone for the prosecutor of the idea of formalization of Islamic Shari'ah in Indonesia.

Historically, the abolition of seven words in the Jakarta Charter means the sacrifice of Muslims in the context of pluralism. This is not a defeat but a moral victory, which shows that Muslims have a great contribution and a good cause for the formation of a nation that is essentially very plural, even though the majority of the population is Muslim. But for the disillusioned of the journey of history it is assumed that the founders of the nation of the Muslim group have betrayed the aspirations of Muslims, accepting

the abolition of seven words in the Jakarta Charter, marked by the 'Kartosuwiryo Rebellion' (DI / TII) taking place in Java, In Aceh with the main character Daud Beueureuh, in South Sulawesi through the Kahar Muzakkir movement and in South Kalimantan with the character of Letda Ibnu Hajar.

Secondly, ideological issues, ideological discourse offered by Islamic groups who want formalization of Islamic Shari'ah in politics is not easy to make many people believe and express their support even by (mostly) among scholars. Islam (as ideology) is usually confronted with Pancasila as the state ideology. Islam versus Pancasila is a counter-productive discourse for the progress of the Islamic movement itself. The confrontation of Islam and Pancasila (in the context of ideology) has absorbed much of the energy from the Islamic movements in Indonesia that are mutually "muddled" themselves. The imposition of a single principle by the New Order regime on political parties and mass organizations (1985) should be a lesson for all. Shari'ah Islam ideologically, still leads to pro-contra that prolonged, both internally Muslims, as well as with outsiders (non-Muslims). In the internal context there is still a substantive questioning; Should it be proper that a universal Islam is derived from (into the) ideology? With outsiders, the offer of Islamic ideology is not easy to understand by (them).

Thirdly, the technical-practical problem is how is the technical implementation of Islamic Shari'a, if the state intervenes? Sharia police superintendent should be formed? The shadow of inconvenience inspired many, when the idea of formalization of the Islamic Shari'a.

Another area of political issues, the emergence of shari'ah-based regulation can be seen from efforts to implement or formalize Islamic Shari'a through a new strategy through the Regional Government as a result of the constant struggle of the implementation of Islamic Shari'ah through the constitution. But is that really the main reason, or is it just a political interest of the Regional Government to get support from the community.

2. Discussion Sharia-Based Regulation If connected with the State and Religion in Perspective of Pancasila

Religion, as expressed by many, can be viewed as a Divine instrument to understand the world of Islam,

(Bachtiar Effendi; 1998 hlm; 6) as opposed to other religions, is actually the easiest religion to accept such a premise. The main reason lies in the most prominent feature of Islam, namely its omnipresence. It is a view that recognizes that "everywhere" the presence of Islam always provides "the right moral guidelines for human action" (Fazrul Rahman; 1966 hlm; 4)

The holistic view of Islam has some implications. One of them is that it has encouraged the birth of a tendency to understand Islam in its "literal" sense that it only emphasizes the "outer" dimension (exterior) and ignores the "contextual" and "interior" dimensions. In terms of this holistic nature of Islam, Qamaruddin Khan writes as quoted by Bachtiar Effendi (Bachtiar Effendi; 1998 hlm; 9) : There is a false view in the minds of some Muslims today that the Qur'an contains a thorough explanation of everything. This misunderstanding is due to a false view of the Qur'anic verse that reads: "And We have sent down to you the Scripture to explain all things, and guidance, and mercy and glad tidings for those who surrender" (QS An Nahl ayat ; 89). This verse is meant to say that the Qur'an contains an explanation of all aspects of moral guidance and not an explanation of all the objects of life. The Qur'an does not contain anything related to general knowledge.

In fact, recognizing Shari'ah as a comprehensive life system is something, while understanding it correctly is another thing. In fact, in the context of "how the shari'ah should be understood" this is, as Fazrul Rahman sees, lies the real issue. There are a number of factors that influence and shape the outcome of the Muslim understanding of shari'ah. The ideological, cultural, and intellectual situations, or so-called Arkoun as "aesthetics of reception," are very influential in determining the form and content of understanding. Therefore, even though every Muslim accepts the general principles set forth in the Shari'ah, their understanding of the teachings of Islam is colored by differences.

On the relationship between religion and state in Islam, according to Munawir Sjadzali (Munawir Sadjali; 1985 hlm; 235-236) , there are three schools that respond. First, the flow that assumes that Islam is a plenary religion, which includes everything, including the problems of the state. Therefore religion can not

be separated from state and state affairs is a religious affair and vice versa.¹

The second flow, saying that Islam has nothing to do with the state because Islam does not regulate the life of a state or government. According to this flow, the Prophet Muhammad had no mission to establish a state.²

Third, argues that Islam does not cover everything, but includes a set of ethical principles and values of social life including statehood. Therefore, in a state, Muslims must develop and implement outline by Islam

Model of religious and state relations. Hussein Muhammad (Hussein Muhammad; 2000 hlm; 92-94) mentions two models, namely integralistic and mutualistic symbiotic relationships. First, it is an integralistic relationship. This relationship model can be interpreted as a relation of totality, where religion and state is an inseparable unity. Both are two integral institutions. It also provides the understanding that the state is a political institution and a religious institution.

M. Amien Rais said in his paper, that Islam is *din and daulah* (religion and state) (M. amien Rais; 1987 hlm; 7). The statement is also the opinion of almost all modern writers. Muhammad Yusuf Musa in his book *Nizham al-Hukmifii al-Islam*, has repeatedly asserted that Islam is *din and daulah* (Muhammad Yusuf Musa; 1964 hlm; 7).

The second relationship model is a symbiotic-mutualistic relationship. The model of this relationship, affirms that between religion and country there is a relationship of mutual need. According to this view, religion must be well executed. This can only be done if there is an institution called a country. Meanwhile the state can not be left alone without religion. For without religion there will be chaos and immorality in the state.

According to Nurcholis (Muhammad Yusuf Musa; 1964 hlm; 256) the value of state and government in Islam is instrumental and not the purpose itself. The purpose of living Muslims is not to set up a nation, but to the Lord and return to Him. The government or the state is created to create space and time as a place for every human being to develop piety to his God. Thus,

1. Among those included in this category of supportive thinking are Rasyid Ridha, Sayyid Quthb, and Abul al-A'la al-Maududi.
2. This controversial thinker is Ali Abdul al-Raziq.

religious and state relations are ethical non-spiritual issues. The state does not regulate and interfere with the spirituality of citizens with God. Through the state it is hoped that an ethical society created by religious values will be created.

Shari'a-based regimes associated with the state and religion in the Pancasila perspective can be seen from the return of the Indonesian nation to the 1945 Constitution through the Presidential Decree by linking the Jakarta Charter Manuscript, it is not yet formal juridical basis for the validity of Shari'ah Islam in Indonesia Intact. However, it has given place for the position of Shari'ah Islam in Indonesia, or at least provides a basis for the formation of national legislation based on Islamic Shari'ah. In other words there is an opportunity given by the Constitution to be used by Muslims in the formation of national legislation based on the Shari'ah of Islam (Syamsul Wahidin and Abdurrahman; 1984 hlm; 108).

According to Soepomo in his speech with the most basic issue of Indonesian Problem as quoted by Syafi'i Ma'arif, Pancasila is the foundation of a state still debated in the Constituent Assembly.³ The Islamic group considers that historically Pancasila animates the Jakarta Charter. For Muslims the ideals of Pancasila law is none other than how to implement the values of Islamic teachings that have some universal principles that can be accepted by all groups. According to M. Tahir Azhari (Taher Azhari; 1992 hlm; 69) , the concept of Pancasila state law has the following key characteristics;

- a. There is a close relationship between religion and the State;
- b. Relying on the One God;
- c. Religious freedom in a positive sense;
- d. Atheism is not justified and communism is prohibited;
- e. The principle of kinship and harmony;
- f. The constitutional system;
- g. Equality in law;
- h. Free courts;

3. There was an interesting drag on the discussion of the State Basis between the Nationalist, Religious and Indonesian Nationalist Groups. Each propose ideas according to the ideology adopted. So according to Soepomo Pancasila is a political agreement, see Syafi'i Ma'arif, Islam and State Problems

Historically it is a necessity that Pancasila reflects the spirit of the Jakarta Charter. This is a gift of Muslims for the unity and unity of the Indonesian nation from national disintegration. The great-minded Muslims eliminate seven words; Belief with the Obligation to execute Islamic Shari'ah for its adherents become Belief in God Almighty. Pancasila can not only be seen in terms of legal ideals that contain the philosophy, ideas of ideas, and cultural values of a nation. But furthermore it is a reflection of the values of Islamic teachings in all aspects of human life as a whole.

In addition to this, the response of several regions in Indonesia to the autonomy and decentralization policies that have been rolling since the enactment of Law no. 22 of 1999 on Regional Government which was later replaced by Law no. 32 of 2004 on Regional Government has made some areas especially based on a very strong religious sociological culture, especially the Islamic religion demanded the enactment of Islamic Shari'ah (Muntoha; 2010 hlm; 109).

3. The Role of Regional Autonomy in the Emergence of Sharia-Based Regulation

The fall of power of the New Order after a long time to curb the freedom of society gave a new passion for democratic life in Indonesia and the beginning of the reform era in all aspects of life from economic, political, social, and cultural. However, the transition, characterized by the shifting powers of the New Order regime to the reform era, did not quickly bring the Indonesian people into a democratic order.

Indonesia is a country that embraces a unitary State system (unitary) in the form of Republic. The Unitary State of the Republic of Indonesia is divided into provincial and regional areas of the province divided into districts and municipalities, each of which regencies and municipalities have a Regional Government regulated by law.

Regional Autonomy is the policy of the Government of the Republic of Indonesia to distribute power between the Central Government and the Regional Government. Through Regional Autonomy, local governments are authorized to regulate and manage their respective regions in various ways, except: foreign, defense, security, yustisi, monetary, fiscal and religious.⁴

4. This is regulated in Article 18 paragraph (2) of the 1945 Constitution and also in Article 10 of Law No. 32 of 2004 on

After the implementation of Regional Autonomy which is marked by the enactment of Law no. 22 of 1999 on Regional Government from 1 January 2001, which was subsequently replaced by Law no. 32 of 2004 on Regional Government, each region (province, district / city) is given a very large authority to regulate and govern their respective regions

The opportunities given by the regional autonomy policy were translated vary by region. One of the "translations" used is to make various Regional Regulations (Perda). In some areas, including in South Kalimantan, there is an interesting phenomenon of law making to be studied academically, especially from a legal and political perspective. The phenomenon is the emergence of many local regulations that regulate issues related to the religiousness of a person and / or group in a society commonly called Islamic Sharia Ordinance or Perda Berbasis Syari'ah, such as the law on Khatam Koran duty for children of elementary school age / MI, Perda on Ramadan, Perda on Jum'at Khusu 'and various other Perda with the intention of protecting, defending and / or maintaining various characteristics typical of the region.

Sharia-based regulations are currently implemented at least in 6 (six) provinces, 38 (thirty eight) districts and 12 (twelve) cities. The pattern of enforcement of sharia-based regulation also varies as in Nanggroe Aceh Darussalam Province (NAD) which affirms the implementation of Islamic Law, sharia-based regulation is made by the Provincial Government which refers to a parent regulation, namely Regulation no. 5 of 2000 on Enforcement of Islamic Shari'a where this regulation is made valid for all districts / cities

In the provinces of Riau, South Sumatra and Gorontalo, sharia-based regulations are made at the provincial level, but are not followed by the District / City Government. The rules governed are generally related to the prohibition of prostitution and circulation of liquor. Another form of enactment of Shariah-based regulation is Perda made by the Regency / City Government, without any parent rules at the provincial level. Cianjur regency (West Java), Tangerang (Banten), Banjarmasin (South Kalimantan) and Pamekasan (Madura, East Java) are some district and / or municipal

Regional Government. State Gazette of the Republic of Indonesia Year 2004 No. 125 and Supplement to State Gazette of the Republic of Indonesia No 4437.

governments implementing syariah-based regulations even though the host province does not regulate it.

In addition to the result of Regional Autonomy which gives wide authority to the region, the emergence of Sharia-based regulation is also due to the granting of special authority for the Province of Nanggroe Aceh Darussalam through Law no. 18 of 2001 on the Province of Nanggroe Aceh Darussalam which inevitably raises jealousy for other regions. Abdul Aziz Kahar Muzakkar, chairman of the preparatory committee for the implementation of the South Sulawesi based shariah law, said that the provision of Special Autonomy in Nanggroe Aceh Darussalam Province has paved the way for other provinces to get the same status. Therefore, South Sulawesi should also be given special status as Nanggroe Aceh Darussalam

The emergence of Sharia-based regulation in the regions and the application of Islamic Shari'ah in Nanggroe Aceh Darussalam has been analyzed by political analyst Denny Indrayana as a strategy that in Mao Tse-tung's terms, this strategy is made 'village besieging the city'. So it is expected that the Shari'ah of Islam will gradually be applied directly in the State of Indonesia. Thus, if Shariah-based regulation already exist in various regions, in the end Shari'ah Islam becomes part that can not be eliminated again from the middle of society

4. Closing

The need for a deep understanding of the drafting of Shariah-based regulation includes the drafting of local regulations in general, so that it is not misunderstood and considered to be out of the Unitary State of the Republic of Indonesia.

The birth of special regulations in the regions, including from local regulations based on the values of religious teachings (in this case Islam), should be understood as the diversity of regions in Indonesia as a plural country with due regard to the hierarchy of laws and regulations in the Unitary State of the Republic of Indonesia.

The formation of Sharia-based regulation should really pay attention to the aspirations of the people, not just for the sake of the moment for the executive and legislative governments of the region.

References

- Amal, Taufik Adnan dan Samsu Rijal Panggabean, *Politik Syari'at Islam; Dari Indonesia Hingga Nigeria*, Pustaka Alvabet, Jakarta, 2004.
- Amrusy, Fahmi, *Otonomi Daerah dalam Negara Kesatuan*, dalam Abdurrahman (editor), *Beberapa Pemikiran Tentang Otonomi Daerah*, Media Sarana Press, Jakarta, 1987.
- Azhary, *Pengantar Hukum Tata Negara*, jilid I, Cetakan Pertama, Konstitusi Press, Jakarta, 2006.
- Dimiyati, Khuzaifah, *Teorisasi Hukum (Studi Tentang Perkembangan Pemikiran Hukum di Indonesia 1945-1990)*, Genta Publishing, Bandung.
- Djamil, Fathurrahman, *Filsafat Hukum Islam*, Logos Wacana Ilmu, Jakarta, 1997.
- Effendy, Bachtiar, *Islam dan Negara; Transformasi Pemikiran dan Praktik Politik Islam di Indonesia*, Paramadina, Jakarta, 1998.
- Fajar, Mukti, *Tipe Negara Hukum*, Banyumedia, Malang, 2004.
- Hasbi Ash-Shiddiqy, Muhammad, *Falsafah Hukum Islam*, Bulan Bintang, Jakarta, 1993.
- Ka'bah, Rifyal, *Penegakan Syari'at Islam di Indonesia*, Khairul Bayan, Jakarta, 2004.
- Liddle, William, "Skripturalisme Media Dakwah: Suatu Bentuk Pemikiran dan Aksi Politik Islam di Indonesia Masa Orde Baru", dalam Mark R. Woodwar (ed), *Jalan Baru Islam, Memetakan Paradigma Mutakhir Islam Indonesia*, Mizan, Bandung, 1999.
- Mahfud MD., Moh., *Politik Hukum di Indonesia*, LP3ES, Jakarta, 1998.
- Muhammad, Hussein, *Islam dan Negara Kebangsaan: Tinjauan Politik*, dalam Ahmad Suaedy, *Pergulatan Pesantren dan Demokrasi*, LKIS, Yogyakarta, 2000.
- Muntoha, *Otonomi Daerah dan Perkembangan "Peraturan Daerah Bernuansa Syari'ah"*, Safiria Insani Press, Yogyakarta, 2010.
- Mu'allim, Amir dan Yusdani, *Konfigurasi Pemikiran Hukum Islam*, Cetakan Pertama, UII Press, Yogyakarta, 1999.

- Nashir, Haedar, *Gerakan Islam Syari'at Reproduksi Salafiyah Ideologis di Indonesia*. Pusat Studi Agama dan Peradaban dan RMBooks, Jakarta, 2007.
- Prasetyo, Teguh, *Hukum dan Sistem Hukum Berdasarkan Pancasila*, Media Perkasa, Yogyakarta, 2013.
- Rais, M. Amien, "Negara dan Masyarakat dalam Sistem Religio Politik Islam". Makalah disampaikan dalam diskusi *Konsep Negara dalam Islam* di Fakultas Hukum UII pada 4 Oktober 1987.
- Rofiq, Ahmad, *Pembaharuan Hukum Islam di Indonesia*, Gama Media, Yogyakarta, 2001.
- Rosjadi, Rahmat dan Rais Ahmad, *Formalisasi Syari'at Islam dalam Perspektif Tata Hukum*, Ghalia Indonesia, Bogor, 2006.
- Salim, Arskal dan Azyumardi Azra, "Negara dan Syariat Dalam Perspektif Politik Hukum Indonesia", dalam Burhanuddin (ed.), *Syariat Islam Pandangan Muslim Liberal*, Jakarta, 2003.
- Sjadzali, Munawir, *Islam dan Tata Negara*, LP3ES, Jakarta, 1985.
- Syarifuddin, Amir, *Pengertian dan Sumber Hukum Islam dalam Falsafah Hukum Islam*, Bumi Aksara dan DEPAG, Jakarta, 1992.
- Sunny, Ismail, *Pergeseran Kekuasaan Eksekutif*, Cetakan Keenam, Aksara Baru Jakarta, 1986.
- Wahyono, Padmo, *Indonesia Negara Berdasarkan atas Hukum*, Cetakan Pertama, Ghalia, Indonesia, Jakarta, 1983.