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Analysis of Islamic Law Accommodation In National Law during the Era of Democratic Transition Government 2001-2004

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Abstract

This paper aims to analyze the position of Islamic law in the national legal system during the democratic transition (2001-2004), which was led by Megawati Sukarnoputri. Although she and the supporting party she led (PDIP) are often associated with secularism (at least considered insensitive to the problems of Muslims), during her reign from 2001 to 2004 several regulations were born that accommodated the interests of Muslims in the form of laws. This study uses a normative research method with primary-based secondary data sources. This study found that of the 126 laws that were legislated during the 2001-2004 transitional government, fourteen of them had intersections with the interests of Muslims which were accommodated in two patterns; first, formalist accommodation where the law strengthened the enactment of Islamic law for Muslims in Indonesia, such as Law No. 18 of 2001 concerning Special Autonomy for the Province of NAD; Law No. 18 of 2003 concerning Advocates, and so on. Second, accommodation in the form of substantive laws that are in line with Maqashid Shari'ah or at least do not contradict Islamic teachings as illustrated in Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Corruption, Law No. 30 of 2002 concerning the Corruption Commission, Law No. 23 of 2002 concerning Child Protection, and others.

Keywords: Accommodation; Islamic Law; National Law; Democratic Transition

Introduction

The relationship between Islam and power in Indonesia is not monolithic. There are at least three relationship patterns put forward by Muslim scholars in the country; *first,* the relationship that places Islam as an ideology in the format of formal application of religious teachings into positive law in Indonesia. Thus, the structural approach in the socialization and institutionalization of Islamic teachings is supported by this orientation; *Second,* the relationship that rejects the formalization of religion in the context of state life. The supporters of this understanding consider that the integrity of the nation will be disturbed if Islamic law is implemented. *Third,* the relationship that is a middle ground between the two orientations above. In this context, Islam is used as a sub-ideology for Pancasila as well as a compromise of growing aspirations where in constitutional and democratic public policy making, religion is involved. It can also be said that this orientation supports Islamization in the form of (1) formal for certain private laws, such as the laws of zakat, hajj, family, and so on (2) substantial, such as the case of murder offenders who are sentenced to death which is in accordance with Islamic law even though it does not use the term *qishash* formally, and (3) essential, i.e. the punishment imposed if the implementation of the two forms above is difficult to realize, such as the punishment for theft which is not the same as Islamic law but essentially meets the provisions that theft is a criminal offense that can be subject to punishment.[1]

Throughout the establishment of Indonesia, the struggle between these three streams has often colored the life of the state. However, the pendulum of history has always made the third model relationship a *kalimatun sawa'* (common platform) that does not deny the involvement of religion in the state but also does not affirm one religion alone. As a result, in every era of government, both the old order, new order, and transition, religion continues to influence every important policy making. The 2001-2004 democratic transition period led by Megawati Sukarnoputri was no exception. Even though she and the political party she led were categorized as a party that was less close to Islamic issues, during her three years in office, regulations were still born that had intersections with the interests of Muslims.

There are several previous studies that have intersections with this discussion. Among them are Indah Rizki Aruma Nurjannah, Nurul Umamah, and Marjono, (2018) who discuss Megawati's policies during her presidency in 2001-2004 related to national stability, eradicating corruption, and policies towards foreign policy. However, it does not discuss Megawati's policies related

[1] Masykuri Abdillah dalam Saripudin HA dan Kurniawan Zein (Ed), *Syari'at Islam Yes, Syari'at Islam No : Dilema Piagam Jakarta dalam Amandemen UUD 1945* (Jakarta: : Paramadina, 2001), h. 17

to Islam and Muslims in Indonesia, even though there are many intersections related to Islamic interests.[2]

The second previous study was conducted by Ridho Imawan Hanafi (2013) who found that Bamusi (Baitul Muslimin Indonesia) had a major influence in changing the image of the Megawati-led PDIP from a secular nationalist party to a religious nationalist party, as well as confirming the convergence of Islam in Indonesia so that the nationalist-Islamic dichotomy proposed by Clifford Geertz melted.[3]

Furthermore, Syahbudi (2021) explains that there is a dialectic between religion and political behavior in the process of formulating Islamic law in Indonesia (including during the transitional government). In this context, religion and politics show an accommodative dialectical pattern where the state accommodates religion which is marked by the enactment of various policies that are seen as in line with the socio-economic, cultural and political interests of Muslims, as in the National Education System Law passed during the democratic transition period which requires education stakeholders to organize religious teaching by teachers who are of the same religion.[4]

In line with this, Lutfi El Falahy (2020) states that the Pancasila legal state is a form of all legal systems, i.e. the joining of all good elements of all legal systems that exist in Indonesia in every era of government (in which the era of democratic transition is included in it). At this level, customary law that is based on religious values must get a proper place in the legal system. because it is what makes a rule good or not and is also the original law of the Indonesians themselves and is more in accordance with the character, personality and culture of Indonesia.[5]

There are also Syugiarto and Nasir Mangngasing (2022) who examine Megawati's leadership style which is oriented towards eastern culture, instilling an understanding of anti-violence and democracy. This leadership style aims to eliminate discrimination for women who are trying to rise to a higher position which she proves with herself that women can lead a country.[6]

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[2] Indah Rizki Aruma Nurjannah, Nurul Umamah, dan Marjono, "Megawati Presidential Political Policy in 2001 – 2004," *Jurnal Historica* Volume 2, No. Issue 1 (Februari 2018): 52–64.

[3] Ridho Imawan Hanafi, *Sayap Islam di Partai Nasionalis Sekuler : Studi Tentang Baitul Muslimin Indonesia di Partai Demokrasi Indonesia Perjuangan 2007-2012*, t.t.

[4] Syahbudi, "Memahami Dialektika Antara Perilaku Agama Dan Politik Dalam Perumusan Hukum Islam Di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (November 2021): 295–312.

[5] Lutfi El Falahy, "Tarik Ulur Hukum Adat Dan Hukum Islam Dalam Hukum Positif Di Indonesia," *Al-Istinbath Jurnal Hukum Islam* 5, no. 1 (Mei 2020): 89–104.

[6] Syugiarto dan Nasir Mangngasing, "Gaya Kepemimpinan Presiden Indonesia," *Jurnal CITIZEN: Jurnal Ilmiah Multidisiplin Indonesia* Vol 2, no. No. 1 (2022): 29–38.

In addition, Rahmania Agustina (2021) discusses the advantages of Megawati's leadership style, which is persistent in fighting, and also discusses her weaknesses, including being very long in making decisions, indifferent to problems, a closed person, someone who is emotional, and allergic to criticism. She is also considered to have failed to create trust in her people, her leadership style emits more pent-up feelings than solutions, barely touching her vision and mission.[7]

This study has the distinction that there has been no comprehensive study that examines the accommodation of Islamic law during the transition period where Megawati became President of the Republic of Indonesia. This type of research is a normative legal research with a juridical-historical approach. The research data sources are secondary made from primary materials obtained through documentation studies. The focus of the study is to examine transitional legislation products that have intersections with the interests of Muslims, whether in formal or substantial form.

Discussion

The democratic transition period is a period of transition from an authoritarian to a democratic system of power. After the fall of Suharto in 1998, Indonesia experienced a transition period that began with Habibie (1998-1999), then Abdurrahman Wahid (1999-2001), and continued with Megawati Sukarnoputri (2001-2004). Megawati became President of Indonesia through a Special Session of the MPR on July 23, 2001 shortly after President Abdurrahman Wahid was impeached from the presidency. In accordance with the Indonesian constitution,[8] "If the president dies, resigns, is "dismissed", or is unable to perform his obligations during his term of office, he is replaced by the vice president until the end of his term of office". Thus automatically, as of July 23, 2001 Megawati occupied the position of the fifth President of the Republic of Indonesia.

There are several problems faced by Megawati's transition government, such as corruption, collusion and nepotism that continue to flourish, economic downturn, law enforcement that has not run optimally, high inflation rates, horizontal conflicts that do not go away, increasing poverty rates, and soaring education costs, even to natural disasters in various parts of the archipelago.[9]

During Megawati's transition period, the 1945 Constitution was amended twice (the third and fourth amendments), changing and adding articles on the basic principles of the state, state institutions and relations between state

[7] Rahmania Agustina, "Riwayat Kepemimpinan Megawati Soekarnoputri," 19 Juni 2021.

[8] Pasal 8 angka (1) UUD 1945 Perubahan Ketiga

[9] Sembodo Ardi Widodo, "Islam dan Demokrasi Pasca Orde Baru," *Jurnal UNISIA* Vol. XXX, No. 65 (September 2007): 217–230.

institutions, as well as provisions on elections and abolishing the Supreme Advisory Council.[10]

At the time of the amendment, the struggle of Islamic political parties to implement Islamic ideology strengthened, proposing a re-discussion of the Jakarta Charter in the process of amending the 1945 Constitution. The proposal was initiated by three factions of Islamic political parties in the MPR, namely PPP, PBB, Persatuan Daulatul Ummat Faction, and the Justice Party which joined the Reformasi Faction.[11] This attempt itself failed because it was not supported by the majority of parliamentarians. It seems that for moderate Islamic and nationalist parties, NKRI based on Pancasila is the final form of state. At that time, the National Education System Law was also discussed, especially Article 12 paragraph 1 (a) concerning religious studies that must be given in accordance with the religion of the students and taught by teachers of the same religion. This was a continuation of the discussion of the Sisdiknas Bill during the previous Abdurrahman Wahid administration.[12]

In general, the figure of Megawati and the PDIP, which backs up her leadership, often gets the spotlight among Indonesian Muslims. Apart from being often associated with secularism, this party is also labeled as a party that is less responsive to the interests of Muslims. In some regions such as West Sumatera, for example, which is identical to religious fanatics, there is a lack of Muslim support for the PDIP that she leads.

lvin Gumelar Hanevi, et al (2022), found that the PDIP-P Party is considered a party that does not respond to the needs of the people and is considered a party that does not move with the people with a percentage of 95.8% and has not moved with the people.[13]

Likewise Fadli Afriandi (2021), who found that the low vote of PDI Perjuangan in West Sumatra was caused by the party's lack of populism for the people of West Sumatra. PDI Perjuangan is considered insensitive to the character of the Minangkabau people. Its identity and policies are not in accordance with the tastes of the people, and its and its policies are not in accordance with the tastes of the people, and its track record is not good for the

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[10] *Politik Indonesia* (Jakarta: Lembaga Penelitian UIN Syarief Hidayatullah Jakarta, 2011), h. 140

[11] Sukron Kamil, *Islam Politik di Indonesia Terkini ; Islam dan Negara, Dakwah dan Politik, HMI, Antikorupsi, Demokrasi, NII, MMI, dan Perda Syari'ah*, Cet. I (Jakarta: : PSIA, 2013), h. 24

[12] Busman Edyar, "RUU Sisdiknas Dan Pendidikan Pluralis Multikultural," *, Kompas,* March 31, 2003.; A. Bakir Ihsan, *Ideologi Islam dan Partai Politik : Strategi PPP dalam Memasukkan Nilai-nilai Islam ke dalam Rancangan UU di Era Reformasi*, (Jakarta : Orbit Publishing Jakarta, 2016), Cet. I, 8

[13] lvin Gumelar Hanevi, Irwan, Azwar Ananda, Susi Fitria Dewi, dalam, "Persepsi Masyarakat Kota Padang Terhadap Partai Demokrasi Indonesia Perjuangan (Studi Pada Masyarakat Kelurahan Dadok Tunggul Hitam Dan Kelurahan Lolong Belanti)," *Journal of Civic Education* Volume 5, no. No. 1 (2022): 252–60.

people in West Sumatra. its track record is not good for the people in West Sumatra.[14]

This research certainly cannot be generalized to the whole of Indonesia because in other regions PDIP has the support of fanatic Muslims as well. In Surakarta, for example, people of Arab descent in their political affiliation with PDIP have high loyalty. They join the PDIP in order to get a sense of security and socio-political environmental factors and personality structures that are reflected in the attitude in which they accept political stimuli and their open, sociable, and extroverted personal characteristics.[15]

In several moments of national leadership elections, Megawati's closeness to Muslims was also seen. During the 2004 presidential election, for example, even though it was not carried by an Islamic party, the selection of Hasyim Muzadi as a vice-presidential partner was clearly part of Megawati's efforts to approach Muslims, especially Nahdhiyin residents. Likewise, during the election of MPR leaders in 2004, PDIP was supported by the Reformation Star Party led by KH Zainuddin MZ. In subsequent developments, in the Regional Head elections, the PDIP coalition with Islamic parties also thawed with the endorsement of candidates from the coalition.

Overall, the leadership of Megawati Sukarnoputri has accommodated the interests of Muslims in the form of laws. Of the 126 laws produced in the period 2001-2004, 14 of them had intersections with the interests of Muslims, 4 were formalist, and 9 were substantive.

1. Formalist Accommodation

Formalist accommodation is the accommodation of Islamic law in national positive law in the form of regulations that strengthen the enactment of Islamic law as contained in the texts of the Qur'an and hadith. In this case, the state is present by formalizing what is desired by Islamic law. During the Megawati administration, there were at least four legislative products that fell into the formalist category, namely:

a. Law No. 18/2001 on the Special Autonomy of Nanggroe Aceh Darussalam

Unlike Indonesian society in general, Acehnese society is organized in the adage "*Adat bak po teumeureuhom; hukum bak syiah kuala; qanun bak putro phang; reusam bak laksamana*" (*adat* from the sultan, law from the ulema, *qanun* from putra pahang, *reusam* from the admiral).[16] The law referred to is Islamic law, then *adat* is defined as unwritten law and has sanctions, applies to anyone

[14] Fadli Afriandi, "Rendahnya Dukungan Terhadap Partai Demokrasi Indonesia Perjuangan Di Sumatera Barat, Indonesia," *JISPO Jurnal Ilmu Sosial Dan Ilmu Politik* Vol. 11, no. No. 1 (2021): 133–54.

[15] Bio Rahma Yuana dan Setiajid, "Afiliasi Politik Warga Keturunan Arab Dengan Partai Demokrasi Indonesia Perjuangan Di Surakarta," *Unnes Political Science Journal* 4, no. 1 (2020): 7–11.

[16] Syamsul Bahri, "Pelaksanaan Syari'at Islam Di Aceh Sebagai Bagian Wilayah NKRI," *Jurnal Dinamika Hukum* Vol. 12, no. No. 2 (Mei 2012): 358–67.

indiscriminately, while *urf* is the opinion of ulema in running the country, but not based on religion, but based on custom, while *reusam* is defined as a former law. In addition, there is another confirmation from the Sultan, that if one day a new *adat* (law) is born if it conflicts with Islamic law (law), then the new law cannot be called *adat*. Therefore, it must be rejected. It was also stated that all "laws" immediately become *"adat"*. The two should not be separated and should be fused like substance with nature. Thus, it can be understood that there were two laws applicable in the kingdom of Aceh Darussalam at that time, namely: the original law of *adat* itself and the "law" derived from Islamic law. Then both are fused and cannot be separated.[17]

It was at this point that the Indonesian state accommodated it through the establishment of the Special Autonomy Law for the Special Province of Aceh as the Province of Nanggroe Aceh Darussalam. The first regulation related to Aceh after the birth of the Law on Local Government was "the birth of Law No. 44/1999 on the implementation of the privileges of the Special Province of Aceh concerning the organization of religious life, customary life, education and the role of ulama in determining regional policies. Then the implementation of religious life is realized in the form of the implementation of Islamic law for its adherents, while maintaining harmony between religious communities".[18]

Explicitly through Law No. 44/1999, the government guarantees freedom for Aceh in developing and practicing religious life in accordance with Islamic Shari'a, including the Islamic judiciary, which becomes very crucial for its existence because when talking about the implementation of Islamic Shari'a, it also means talking about Islamic judiciary. This is because it is impossible for the teachings of Islam to be implemented properly and perfectly if there is no institution that functions to resolve problems / disputes / cases that occur in society. The existence of Islamic judiciary also serves to ensure a sense of justice, peace and tranquility in the community.[19]

Another important aspect of this law is the freedom of the Acehnese Muslim community to implement Islamic law with the existence of the Syar'iyah Court as mentioned in article 25 that for Muslims in the Province of NAD there is a court "conducted by the Syar'iyah Court which is then regulated by Qanun of the Province of NAD. The Aceh Qanuns, which relate to the procedures for implementation, have various perceptions: 1) making Islamic law a positive law that applies only to Muslims; 2) integrating the material and principles and moral values of Islamic law into national law that applies to all citizens; 3) enabling

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[17] Misran, "Pelaksanaan Syariat Islam Di Aceh : Analisis Kajian Sosiologi Hukum," *Legitimasi : Jurnal Hukum Pidana Dan Politik Hukum* Vol.1, no. No. 2 (June 2012): 1–15.

[18] Moh. Fauzi, "Problematika Yuridis Legislasi Syariat Islam Di Provinsi Nangroe Aceh Darussalam," *Ahkam : Jurnal Pemikiran Hukum Islam* 22, no. Nomor 1 (April 2012): 1–26.

[19] Teuku Abdul Manan, *Mahkamah Syar'iyah Aceh Dalam Politik Hukum Nasional* (Jakarta: Prenada Media Grup, 2018).

Islamic law in the public policy-making process. These provisions may influence the culture and practice of law itself, in terms of whether religion or Islamic Shari'a is the guiding principle of Acehnese society. The authority of the Syar'iyah Court replaces all the authority of the religious courts, but the authority of the Syar'iyah Court set out in Qanun No. 10 of 2002 also covers all aspects of the law that require resolution through the judiciary.[20]

b. Law No.18 of 2003 on Advocates

In essence, this regulation talks about the provisions of advocates (lawyers) in Indonesia. However, an important intersection in this provision is when it provides legistimation for advocates who have a sharia educational background. So far, only those who are allowed to work as advocates have a background in law education (SH) and there is no opportunity for sharia graduates. Whereas sharia alumni receive general legal education as well as other general law graduates. In addition, they also have knowledge of Islamic law which is clearly needed when litigating in religious courts. What's more, when solving inheritance, marriage, and waqf cases, of course they are more fluent than general law graduates who are not equipped with this material. "This is different from the previous legal basis, namely SEMA Number 1 of 1998 dated September 2, 1998, which opened the opportunity for sharia graduates to become practicing lawyers specifically for the Religious Courts environment. Although in practice, Sharia lawyers can practice in all judicial environments because the cards issued by the High Court are not differentiated from lawyers with law degrees, and the exam material is the same between Sharia lawyers and lawyers.[21]

Article 2 (1) of this Law states that those who can be appointed as Advocates are graduates with a background in legal higher education and after attending special education for the Advocate profession conducted by the Advocate Organization. Then in the explanation of article 2 paragraph (1) of this Law, it is stated that what is meant by having a background in legal higher education is a graduate of the faculty of law, faculty of sharia, military law college, and police science college.[22]

The inclusion of the Faculty of Sharia clause in the law is a formal "juridical recognition" for graduates of the Faculty of Sharia. Advocates graduating from the Faculty of Sharia are not only equipped with the ability to master the basic concepts of Islamic law, but also proficiency in solving legal problems that are developing today. In addition, in 2016 the Ministry of Religious Affairs issued a regulation on academic degrees as stipulated in the Minister of Religious Affairs Regulation (PMA) Number 33 of 2016 concerning the determination of the division of science and academic degrees within

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[20] Misran, "Pelaksanaan Syariat Islam Di Aceh : Analisis Kajian Sosiologi Hukum."

[21] Yusdani, "Posisi Tawar Sarjana Syari'ah Menurut Uu Advokat," *Al-Mawarid* Edisi XII (Tahun 2004).

[22] Pasal 2 ayat (1) "UU N0 18 Tahun 2003 Tentang Advokat" (2003).

Religious Universities. The changes are only in the academic degrees of S1 and S2, while for S3 the doctoral degree remains as in general. As for the academic titles for Bachelor's Degree (S1), one of them is the Faculty of Sharia which changes to SH and Bachelor's Degree (S2) to MH. This policy of changing academic degrees further adds to the opportunities for equal opportunities for graduates of the Faculty of Sharia with graduates of other law universities in empowering the quality of graduates for the needs of future development of a just humanity.[23]

The ratification of this law "is the beginning of opportunities as well as challenges for sharia scholars to enter and become part of it. Now sharia scholars have the same opportunity as law graduates to become advocates.[24] This means that the work of becoming an advocate for Sharia scholars is not only limited to religious courts, but also open opportunities for lawyers in other courts, such as the General Court, State Administrative Court, and Milter Court. Even the scope of the advocate profession is not only limited by the walls of the courtroom in court or not only proficient in the process of litigation in court but also open opportunities to provide legal services outside the court (non-litigation). Such as providing legal consultations, legal services, legal advice, legal opinions, legal information, and drafting contracts.[25]

c. Law No. 4 of 2004 on Judicial Power

In general, all judicial institutions in Indonesia are tied to their respective departments. Article 11 of Law No. 14/1970 on the Basic Provisions of Judicial Power states: (1) The bodies that conduct the judiciary mentioned in article 10 paragraph (1) are organizationally, administratively and financially under the authority of the respective Departments concerned. Religious Courts are no exception. The existence of Law No. 7/1989 on Religious Courts has strengthened the link between religious courts and the Ministry of Religious Affairs. Although the technical development of PA institutions is carried out by the Supreme Court, the development of organization, administration, finance, as well as the development and supervision of judges is carried out by the department (in this case the Minister of Religious Affairs).[26] Even appointments and dismissals are made by the President on the proposal of the Minister of Religious Affairs.[27] Likewise, the formation of the Judges' Honor Council and the arrest/detention of a PA judge by order of the Attorney General must be

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[23] Rachmadani, "Kompetensi Advokat Syariah Dalam Penanganan Perkara Perdata Dan Pidana Di Kota Kendari," *Zawiyah : Jurnal Pemikiran Islam* Vol. 5, no. 1 (July 2019): 98–116.

[24] Aminuddin, "Jaminan Undang-Undang Tentang Pengacara Syari'ah Di Indonesia," *Jurnal Al-Mawarid* Edisi XII (2004): 15–24.

[25] Syukrawati, "Eksistensi Advokat Menurut Hukum Islam (Peluang Advokat Bagi Sarjana Syari'ah Dalam Proses Penegakan Hukum)," *Al-Qishthu* Volume 13, no. Nomor 1 (2015): 73–84.

[26] Pasal 5 ayat (1 & 2) jo pasal 12 ayat (1) UU No. 7 Tahun 1989 Tentang Peradilan Agama

[27] Pasal 15 ayat (2) UU No. 7 Tahun 1989 Tentang Peradilan Agama

approved by the Minister of Religious Affairs in addition to the Chief Justice of the Supreme Court.[28] Meanwhile, the appointment and dismissal of judicial officers such as judges, clerks, deputy clerks, young clerks, substitute clerks and bailiffs are also carried out by the Minister of Religious Affairs.[29]

The above conditions gave birth to a dualistic system of judicial bodies that split the judicial power into two positions: half of the position and existence of the courts of first instance and appeal, including organization, administration, personnel and finance, is held and controlled by the relevant departments; the other half (guidance and supervision of substantive jurisdiction), is held and controlled by the Supreme Court.[30] This attachment to the executive is indeed due to historical factors where the religious courts cannot be separated from the Ministry of Religious Affairs. This is because of its association with the ulama who oversee the religious courts. However, on the other hand, it can cause judges to no longer be independent in carrying out their functions as judicial institutions. He is very vulnerable to being co-opted by power. In turn, free and fair law enforcement will be constrained in its implementation. Thus, the mandate of the 1945 Constitution Article 24 paragraph (1), which states that judicial power is an independent power to administer justice in order to uphold law and justice, is difficult to achieve. Indeed, a judge must be; a) free to carry out his/her judicial duties based on the facts at hand and also free from external influence, inducement, pressure, or direct and indirect threats; b) free from improper relationships with the executive and legislative branches or other groups that could affect the independence of judges and the judiciary; c) free from all forms of pressure in decision making.[31]

On this basis, Law No. 35/1999 on the Amendment of Law No. 14/1970 on the Basic Provisions of the Judiciary was enacted, which unified the development of judicial bodies under the Supreme Court. For the religious courts, this was not easy to do, as they had been inseparably linked to the Ministry of Religious Affairs (Majelis Ulama Indonesia). However, as the 1945 Constitution was amended to ensure the existence of all existing judicial institutions, a special legal umbrella was inevitably needed. The first thing that was amended in this regard was the Basic Judiciary Law No. 14 of 1970 plus Law No. 35 of 1999 which was replaced by Law No. 4 of 2004 on Judiciary and replaced again by Law No. 48 of 2009 on Judicial Power. The most important change was to eliminate the dualism of supervision and guidance of the PA judiciary from the Ministry of Religious Affairs (executive) and the Supreme Court (Judiciary) into one roof under the Supreme Court.[32]

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[28] Pasal 19 ayat (3) jo pasal 25 UU No. 7 Tahun 1989 Tentang Peradilan Agama

[29] Pasal 36 junto pasal 40 ayat (1) UU No. 7 Tahun 1989 Tentang Peradilan Agama

[30] Diana Rahmi, *Restrukturisasi Peradilan Agama dalam Perpekstif Kekuasaan Kehakiman yang Merdeka* (Banjarmasin: IAIN Antasari Press, 2014), h. 43

[31] M Agus Santoso, "Kemandirian Pengadilan Tindak Pidana Korupsi dalam Sistem Ketatanegaraan di Indonesia," *Jurnal Yustisia* Vol. 1, no. No. 3 (September 2012): 15–25;

[32] Taufiq Hamami, *Peradilan Agama Dalam Reformasi Kekuasaan Kehakiman Di Indonesia Pascaamandemen Ketiga UUD 1945*, Cet. I (Jakarta: PP Tatanusa, 2013).

d. Law No. 41 of 2004 concerning Waqf

The practice of waqf that occurs in the life of the community has not fully run in an orderly and efficient manner so that many waqf objects are not properly maintained, neglected or transferred to the hands of third parties against the law. This situation is not only due to the negligence or inability of the nazir in managing and developing waqf assets but also due to the attitude of the community who do not care or do not understand the status of waqf assets that should be protected for public welfare in accordance with the purpose, function, and designation of waqf.

In the history of waqf in Indonesia, Law No. 5/1960 on the Basic Regulation of Agrarian Principles is the first regulation that explicitly mentions it. After the reformation, a more comprehensive regulation related to waqf emerged, namely Law No. 41 of 2004 with several changes, such as; *First,* there is an obligation to record waqf and state it in a registered and announced waqf pledge deed, the implementation of which is carried out in accordance with the procedures regulated in special laws and regulations. This recording is intended to create legal and administrative order of waqf in order to protect the property waqf.[33] *Second,* "waqf can endow part of its wealth in the form of movable waqf assets, whether tangible or intangible, such as money, precious metals, securities, vehicles, intellectual property rights, lease rights, intellectual property rights, other movable objects," including *mushaf* and books (*kitab*).[34]

Third, waqf "is also directed to promote public welfare by realizing the potential and economic benefits of *waqf* assets. This allows the management of *waqf* assets to enter the area of economic activities in a broad sense as long as the management is in accordance with Sharia management and economic principles. The management and development of *waqf* assets must also be carried out productively (article 43 paragraphs 1,2), even if a guarantor is needed to guard against risks, a sharia guarantor institution can be used (paragraph 3). The explanation of article 43 paragraph (2) emphasizes: the management and development of *waqf* assets is carried out productively, among others, by means of collection, investment, investment, production, partnership, trade, agribusiness, mining, industry, technology development, construction of buildings, apartments, flats, supermarkets, shops, offices, educational facilities or health facilities and businesses that are not contrary to sharia.[35]

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[33] Said Husin, "Wakaf Dalam Perspektif Hukum Wakaf Di Indonesia (Telaah/Studi Pengelolaan Dan Pendayagunaan Harta Wakaf Bagi Kemaslahatan Umat)" (Yogyakarta, Universitas Islam Indonesia, 2008).

[34] Ali Amin Isfandiar, "Tinjauan Fiqh Muamalat Dan Hukum Nasional Tentang Wakaf Di Indonesia," *La Riba : Jurnal Ekonomi Islam* Vol. II, No. 1 (July 2008): 51–73.

[35] Winoto Soekarno, "Pengembangan Wakaf Sebagai Sumber Modal Usaha," accessed April 26, 2022, http://saleematijarah.com/uploads/6_-_STMIK_AMIKOM_PENGEMBANGAN_WAKAF.pdf.

Fourth, related to the *nazir,* which has been added in the form of an organization and the existence of *nazir* requirements such as Indonesian citizen, Muslim, adult, trustworthy, physically / mentally capable, and not obstructed from doing legal acts. With these new requirements, the *nazir* can manage/develop waqf objects more professionally and avoid misappropriation.[36]

Fifth, this law also regulates the establishment of the Indonesian Waqf Board which can have representatives in the regions as needed. The agency is an independent institution that carries out tasks in the field of waqf that provides guidance to *nazir* so that waqf assets are managed better and more productively so that they can provide greater benefits to the community, both in the form of social services, economic empowerment, and public infrastructure development.[37]

2. Substantive Accommodation

The second pattern of accommodation of Islamic law in national positive law during the democratic transition is substantive accommodation. This second pattern does not one hundred percent regulate a legal need, but the legal product does not run away or even contradict Islam. Of the ten legislative products categorized as substantive accommodation, four of them can be seen in the following explanation;

a. Law No. 20 of 2001 Amending Law No. 31 of 1999 Concerning the Eradication of the Crime of Corruption

This law is an improvement to Law No. 31/1999 on the Eradication of Corruption. This is a form of seriousness of the state and legislators in dealing with corruption issues in the country. In this law there are several important points, such as; a). The existence of the phrase reverse proof for people suspected of committing corruption crimes charged to the defendant; b) "in addition to being obtained from witness testimony, letters, and testimony of the defendant, evidence is also obtained from other evidence in the form of information that is spoken, sent, received, or stored electronically by optical means or similar but is not limited to electronic data interchange, electronic mail (e-mail), telegram, telex, and facsimile, and from documents, namely any recording of data or information that can be seen, read and or heard that can be issued with or without the aid of a means, whether contained on paper, any physical object other than paper, or electronically recorded, in the form of writing, sound, images, design maps, photographs, letters, signs, numbers, or perforations that have meaning; c) regulate new provisions regarding the

[36] Tata Fathurrohman, "Wakaf Dan Kemiskinan Perspektif Hukum Islam Dan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Fathurrohman, Tata. 'Wakaf Dan Kemiskinan Perspektif Hukum Islam Dan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf.,'" *Syiar Hukum* 8, no. 3 (2006): 255-286.

[37] "Sejarah Badan Wakaf Indonesia," April 25, 2022, https://www.bwi.go.id/pProfil-badan-wakaf-indonesia/sejarah-badan-wakaf-indonesia/.

maximum imprisonment and fines for corruption offenses with a value of less than Rp 5. 000,000.00 (five million rupiahs).

Based on the provisions of Article 43 of Law No. 31/1999 on the Eradication of Corruption as amended by Law No. 20/2001, the special agency, hereinafter referred to as the Corruption Eradication Commission, has the authority to coordinate and supervise, including conducting investigations, investigations and prosecutions, while the establishment, organizational structure, work procedures and accountability, duties and authorities and membership are regulated by law. At present, the eradication of corruption has been carried out by various institutions such as the prosecutor's office, the police and other bodies related to the eradication of corruption, therefore the regulation of the authority of the Corruption Eradication Commission in this Law is carried out carefully to avoid overlapping authority with these various institutions. The authority of the Corruption Eradication Commission in investigating, investigating, and prosecuting corruption crimes includes corruption crimes involving law enforcement officials, state administrators, and other people related to corruption crimes committed by law enforcement officials or state administrators; receiving public attention; and/or involving state losses of at least Rp.1,000,000,000.00 (one billion rupiahs).

Related to Islam itself, there are at least two important things; first, about the act of corruption itself. Corruption in Islam is clearly a very despicable and prohibited act. Allah prohibits His servants from eating other people's wealth unlawfully as mentioned in QS. 2: 188 and QS. 4 : 29).[38] The prohibition (*nahy*) contained in the word *laa tak kuluu* in the verse above shows that eating other people's goods or property, whether individual or collective, is forbidden, as is corruption, which is misusing or embezzling money/ public wealth (state, people, or many people) for personal gain. Corrupt practices are usually carried out by officials who hold a position in either government or private organizations.[39]

Transfer of ownership is not valid if it is done through methods such as stealing, robbing, cheating, shoplifting, embezzlement, usury, bribery, and all kinds of corruption. As long as it is haram, then the wealth cannot be eaten (used) because it does not belong to it. Corruption-generated wealth if eaten and becomes blood in the body will always encourage to commit acts of evil. If it becomes sperm, it will give birth to a polluted generation, and if it is used, it will give birth to sin and evil. This is because corruption is an immoral act that is diametrically opposed to the noble values that must be attached to a believer. A believer is required to be honest (*al-saadiq*), uphold the trust (*al-aamin*), generous (*al-sakhaa'*), compassionate (*al-raahim*), helpful (*al-ta'aawun*) and so on, while a

[38] This verse reads:

يَاأَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

[39] Daud Rasyid, *Reformasi Republik Sakit; Peluang dan Tantangan Penerapan Shari'at Islam Pascakejatuhan Soeharto* (Bandung: Syaamil, 2006), h. 23.

corruptor is a reflection of a deceiver (*al-kaazib*), traitor (*al-khaain*), greedy (*al-thama'*), and cruel and savage (*al-mutawakhish*).[40]

Second, related to anti-corruption institutions, the existence of a corruption court institution is in line with the ushul fiqh principle of *amru bi shai in amru biwasaailih* (an order with something means an order also with its supporters). Ushul fiqh scholars exemplify this principle with the obligation of taharah when going to pray. Although taharah is basically sunnah, if you want to pray then the law becomes obligatory. This is because prayer is not valid if a person is not pure (taharah). A similar principle is *maa laa yatimmu waajibu illa bih fahuwa waajib* (an obligatory thing cannot be done with something that is not obligatory, so it also becomes obligatory).

b. Law No. 20/2003 on the National Education System

Islamic education in Indonesia in its long history, starting during the colonial period until Indonesia's independence, faced various problems in the form of educational dichotomy, curriculum, goals, resources, and management of Islamic education. Education in Indonesia has been running dualistically (general and religious), since the Dutch colonial government introduced a secular education system, while Islamic education represented by *pesantren* did not pay attention to general knowledge, until Indonesia's independence, although at the beginning of independence it still inherited a dualistic education system.

After Indonesia's independence, Muslims increasingly realized the importance of the struggle of Muslims in achieving independence, and the government tried to improve Islamic education in Indonesia, and as a realization, the Government of Indonesia has formulated in the Republic of Indonesia Law No. 2 of 1989 concerning the National Education System which was continued with Law No. 20 of 2003 which regulates the implementation of a national education system, as an effort to integrate Islamic education in the national education system.[41]

This law ensures religious education for students in accordance with their religion. In fact, the law explicitly states: every learner in every education unit has the right: a. to receive religious education in accordance with the religion he/she adheres to and taught by educators of the same religion; b. Religious educators and/or teachers who are of the same religion as the learners are facilitated and/or provided by the Government according to the needs of the education unit as stipulated in Article 41 paragraph (3); c. (1) Religious education is organized by the Government and/or community groups of religious believers, in accordance with statutory regulations. (2) Religious education functions to prepare students to become members of society who

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[40] MA. Sahal Mahfudh, *Kata Pengantar dalam NU Melawan Korupsi : Kajian Tafsir dan Fiqh*, Cet. I (Jakarta: Tim Kerja Gerakan Nasional Pemberantasan Korupsi PBNU, 2006), h.xi

[41] Fathul Jannah, "Pendidikan Islam Dalam Sistem Pendidikan Nasional," *Dinamika Ilmu* Vol. 13, no. No. 2 (Desember 2013): 162–73.

understand and practice the values of their religious teachings and/or to become religious scholars. (3) Religious education can be organized in formal, non-formal, and informal education channels. (4) Religious education takes the form of diniyah education, pesantren, pasraman, pabhaja samanera, and other similar forms. (5) Provisions regarding religious education as referred to in paragraph (1), paragraph (2), paragraph (3), and paragraph (4) shall be further regulated by Government Regulation. Article 37 The primary and secondary education curriculum shall contain: a). religious education; b). civic education; c). language; d). mathematics; e). natural science; f). social science; g). arts and culture; h). physical education and sports; i). skills/vocational; and 1. local content. (2) (3) The higher education curriculum must contain: a. religious education; b. civic education; and c. language; e) Explanation of Article 37 Paragraph (1) Religious education is intended to form students into human beings who have faith and piety in God Almighty and have noble character. Furthermore, Article 37 paragraph (2) states that the education curriculum must contain Religious Education, Civic Education, and Language Education. These three compulsory subjects imply that the goal of national education seeks to realize a religious Indonesian human being, a nation that can respect its citizens and national identity with its national language". The various "multi-dimensional crises being experienced by the Indonesian nation cannot only be seen and overcome with a mono dimensional approach. However, because the base of the crisis is the low morals, human morals, then religious education has a very large share in building the character and civilization of the nation. For this reason, effective learning of Islamic religious education is needed, so that the successful implementation of religious education contributes to the preparation of a generation that has good ethics, morals and behavior. Conversely, failure in the implementation of religious education will result in the decline of the morals of future generations and in turn will undermine the character of the nation.[42]

c. Law No. 15 of 2003 on Money Laundering

This regulation states: "various crimes, both those committed by individuals and corporations within the borders of a country and those committed across the borders of other countries are increasing. These crimes include corruption, bribery, goods smuggling, labor smuggling, immigrant smuggling, banking, illicit trafficking of narcotics and psychotropic substances, trafficking of slaves, women, and children, illicit arms trafficking, kidnapping, terrorism, theft, embezzlement, fraud, and various white-collar crimes. These crimes have involved or generated enormous amounts of wealth. The wealth is generally not immediately spent or used by the perpetrators of the crime because if it is used immediately, it will be easily traced by law enforcement regarding the source of its acquisition. Usually, the perpetrators of the crime first try to get the wealth obtained from the crime into the financial system,

[42] Samrin, "Pendidikan Agama Islam Dalam Sistem Pendidikan Nasional Di Indonesia," *Jurnal Al-Ta'dib* Vol. 8, no. No. 1 (June 2015): 101–16.

especially into the banking system. In this way, the origin of the wealth is expected to be untraceable by law enforcement. Efforts to hide or disguise the origin of such assets are known as money laundering. In connection with this, efforts to prevent and eradicate the practice of money laundering have become an international concern. Various efforts have been taken by each country to prevent and eradicate money laundering practices including by conducting international cooperation, both through bilateral and multilateral forums".

This regulation is in line with Islamic teachings, namely to ensure the origin of a person's finances. In Islam, the origin of money must be clear, which cannot be from the wrong way. Because in hisab later the material owned will be questioned where it was obtained and where it was spent. In one of his hadiths the Prophet Muhammad Saw said:

«لاَ تَزُولُ قَدَمَا عَبْدٍ يَوْمَ الْقِيَامَةِ حَتَّى يُسْأَلَ عَنْ عُمْرِهِ فِيمَا أَفْنَاهُ وَعَنْ عِلْمِهِ فِيمَا فَعَلَ وَعَنْ مَالِهِ مِنْ أَيْنَ اكْتَسَبَهُ وَفِيمَا أَنْفَقَهُ وَعَنْ جِسْمِهِ فِيمَا أَبْلاَهُ»

"The feet of a servant will not move on the Day of Resurrection until he is asked about his life, where he spent it, about his knowledge, how he used it, about his wealth, where he got it and where he spent it, and about his body, what he used it for".[43]

Then; "all assets amounting to IDR 500,000,000.00 (five hundred million rupiah) or more or an equivalent value obtained directly or indirectly from the crime of: a. corruption; b. bribery; c. smuggling of goods; d. smuggling of labor; e. smuggling of immigrants; f. banking; g. narcotics; h. psychotropic drugs; i. trafficking in slaves, women, and children; j. illicit arms trade; k. kidnapping; l. terrorism; m. theft; n. embezzlement; o. fraud, committed in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia, is an offense under Indonesian law". While in Islam, all the practices of collecting wealth in the above categories are certainly contrary to the maqashid shari'ah, namely for: *hifz al- din* (protecting religion), *hifz al nafs* (protecting the safety of the soul), *hifz al-mal* (protecting property) *hifz al-nasal* (protecting offspring), *and hiz al-aql* (protecting the mind).[44]

d. Law No. 23 of 2002 on Child Protection

The 2002 Child Protection Law has two objectives; firstly, to remove legal pluralism in the issue of child adoption. Previously, there were several regulations related to child adoption, such as; "1) Staatsblad 1917 No. 129, Articles 5 through 15 regulate the issue of adoption; 2) SEMA No. 2/1979, concerning Child Adoption which regulates the legal procedures for applying for child adoption, examining and adjudicating it by the court; 3) SEMA No. 6/1983 concerning the Improvement of SEMA No. 2/ 1979, which came into

[43] HR at-Tirmidzi (no. 2417), ad-Daarimi (no. 537), dan Abu Ya'la (no. 7434), dishahihkan oleh at-Tirmidzi dan al-Albani dalam "as-Shahiihah" (no. 946) karena banyak jalurnya yang saling menguatkan.

[44] Abu Ishaq al-Syatibi, *Al Muwafaqat Fi Ushul Al-Ahkam*, vol. Juz II (Beirut: Dar al-Fikri, tt).

force on September 30, 1983; 4) Decree of the Minister of Social Affairs of the Republic of Indonesia No. 41/HUK/KEP/VII/1984 concerning Guidelines for the Implementation of Child Adoption Licensing, which came into force on June 14, 1984.

After Law No. 23/2002 was enacted, the following supporting regulations emerged; "1) Chapter VIII, Part Two of Law No. 23/2002, on Child Protection, which came into effect on October 22, 2002; 2) SEMA No. 3/2005, on the Adoption of Children, effective from February 8, 2005, following the natural disaster of the earthquake and Tsunami waves that struck Aceh and Nias; 3) Law No. 3/2006, on the Amendment to Law No. 7/1989 on Religious Courts. Article 49 letter a, number 20 states that, Religious Courts are tasked and authorized to examine, decide, and resolve cases at the first level between people who are Muslims in the field of: "... Determination of the origin of a child and determination of the appointment of a child based on Islamic law"; 4) Several Supreme Court Jurisprudence and court decisions that have permanent legal force which in judicial practice have been followed by subsequent judges in deciding or determining the same case, repeatedly, for a long time until present.[45]

Second, this law aims to provide protection for children as well as to ensure the fulfillment of children's rights both related to their development, education, and beliefs. Protection and guarantees in general are essentially relevant to *maqashid al shari'ah* on the intersection of *hifzu al-nasal* (protecting offspring) and *hifzu al-din* (protecting religious beliefs) globally. In a practical level, when children are in an abnormal position, for example abandoned by parents and then in the guardianship or care of others, it often causes problems related to beliefs. Especially when the child has a different religion from the guardian or person who cares for him, in this context the child tends not to be able to express his different religious status. [46]

This assertion can be seen in this regulation, such as; a) there should be similarity in the religion of the child with the guardian; b). Childcare with a person or institution of the same religion[47]; c) Childcare is carried out without distinguishing ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of the child, birth order of the child, and physical and/or mental conditions; d) Childcare as referred to in paragraph (1), is organized through continuous guidance, maintenance, care and education activities, as well as by providing financial assistance and/or other facilities, to ensure the optimal growth and development of children, both physically, mentally, spiritually and

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[45] Mukmin, "Perlindungan Terhadap Hak Anak Angkat," *Jurnal Lex et Societatis* Vol. II, no. 7 (Agustus 2014): 61–71.

[46] Lih. konsep maqashid al-syari'ahnya Al-Syatibi, Abu Ishaq al Syatibi, *Al Muwafaqat fi Ushul al-Ahkam, (*Beirut : Dar al-Fikri, tt), Juz II, 3

[47] Pasal 33 ayat (3), Pasal 37 ayat (3 & 4), dan pasal 42 ayat (4) UU No. 23 Tahun 2002 Tentang Perlindungan Anak.

socially, without affecting the religion adopted by the child; e). Child adoption does not break the blood relationship with biological parents; f). 5 years of criminal punishment or a fine of 100 million for those who violate the provisions of Article 39 paragraphs 1, 2, 4 and for people who persuade children to choose a religion that is different from their beliefs.[48]

Conclusion

The involvement of religion in the life of the state in Indonesia cannot be separated. The succession of leadership and the changing pattern of government still have a connection with religious aspects. Such was the case during the 2001-2004 democratic transition period when Indonesia was led by Megawati Sukarnoputri. Even though it is often associated with the issue of secularism, during her reign (2001-2004) there were still regulations related to religion (in this case Islam). In fact, when referring to Western secularism (the origin of this ideology emerged and developed), the state should not be involved in religious matters. In fact, during his reign from 2001 to 2004, there were several regulations that accommodated the interests of Muslims in the form of laws. Among the 126 laws that were legislated during her reign, fourteen of them were related to Islam with a formalistic accommodation pattern where the law strengthened the application of Islamic law for Muslims in Indonesia. Then substantial accommodation where legislation products are in line with Maqashid Shari'ah or at least do not contradict Islamic teachings.

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[48] Pasal 38 ayat (1 & 2), pasal 39 ayat (2) juntis pasal 79 dan pasal 86 UU No. 23 Tahun 2002 Tentang Perlindungan Anak

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