Original Article

Islamic Law in the Development of Indonesian Law

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Abstract:

Islamic law in Indonesia has experienced a significant transformation in the context of national legal development. As the majority religion, Islam influences legal norms and values in the national legal system. The integration of Islamic Law into the national legal framework displays a role that continues to grow, despite challenges and obstacles. This research reflects qualitative literature, combining normative, sociological, historical and philosophical approaches. The results show that the transformation of Islamic Law into national law is not just a formal recognition, but rather the insertion of its principles into regulations without being explicit. This integration process faces several challenges, including wide variations in interpretations of Islamic Law and different approaches to the application of its principles. Another challenge involves adapting Islamic values to constitutional principles that protect religious freedom. However, the influence of Islamic law in various aspects of life such as marriage, inheritance, sharia economics and dispute resolution remains visible. This integration continues with efforts to incorporate the principles of Islamic law into Indonesian national law in accordance with the basic principles of the state. In facing these challenges and obstacles, it is important to maintain dialogue between stakeholders, understand differences in interpretation, and find a balance point that respects Islamic values and constitutional principles. The development of national law based on religious values requires awareness of ethical aspects in achieving social justice for all Indonesian people.

Keywords: Islamic Law, National Law, Transformation of Indonesian Law.
Introduction

Islam covers various aspects of human existence, starting from theological beliefs (aqidah), legal principles (shari’ah), philosophical perspectives, spiritual ethics (tasawuf), to political dimensions (Miskari, 2019). Islam, as one of the largest religions in the world, has undeniably had a significant impact on the formation of law globally, especially in Indonesia, which is one of the countries with the largest Muslim population. The transition from a country with the largest number of Muslims is now the main reason for the implementation of Islamic law in this highly upheld area of Pancasila (S. Gunawan, 2020).

Within Indonesia, the development of Islamic law within the national legal framework is closely related to the dynamics of legal politics which developed in line with the history of the spread of Islam in the archipelago (Kamsi, 2018). There are two views that understand Islam from two different perspectives. The first perspective, as championed by the pioneers of implementing Islamic sharia law, believes that Islam is holistic. In this understanding, Islam’s relationship with all aspects of life must have a legal and official form. On the other hand, inclusive Islamic thinkers also believe that Islam should not be placed in an antagonistic position towards the state. They view that Islam and the state should not conflict with each other (Nasrulloh & Nurrohman, 2023).

Considering the large influence of Islamic law as a source of law in forming Indonesia’s national legal system (Husaini et al., 2023). Indonesia has adhered to a legal framework rooted in civil law since gaining independence, with major influence from Dutch law. Indonesia has a strong Islamic legal tradition that has shaped its legal system significantly over time (Simamora et al., 2023).

Legal Systems can be characterized as a collection of historically debated concepts regarding the application of law, halakhah, and law in a broader sense, along with political philosophy, organizational structure, and the formation of a system (Aditya, 2019).

The Indonesian state adheres to three different national legal systems: Western Law, Customary Law, and Religious Law. Indonesia, in accordance with its constitution, does not declare itself to be a country that is superior in a particular religion, but instead shows the characteristics of a nation that has unique and individualistic ideals. Indonesia, although its society tends to be secular, can be considered a religious country from a philosophical point of view. Therefore, religious legal rules are an important component of the most important legal documents in the process of forming laws and regulations or in national laws and regulations (Najib, 2020).

The transformation of Islamic law into a national legal framework is an effort to change Islamic law from a normative form to an implemented law, which is often referred to as an effort to positivism Islamic law in the Indonesian legal system (Pardjaman, 2017). The integration of Islamic law into the national legal system actually creates new challenges. This process indicates the need for legal unification even though it provides benefits in meeting Muslim needs. However, this unification process cannot occur naturally, but requires strong political support (H. Gunawan, 2019).

According to (Sirajuddin, 2008), there are 3 reasons for providing jurisdiction over Islamic law in Indonesia as follows:
1. Philosophical basis, makes an extraordinary contribution to the formation of epistemological attitudes in Islam. This contribution is very influential in developing views of life, morality and law in the social and cultural context of society.
2. Sociological basis, showing that the level of religiosity has spread widely in various places and regions, is firmly established and continues to do so on an ongoing basis.
3. Juridical basis, reflected in the historical roots of the Indonesian nation in each time period. Islamic law has played a role since the pre-independence era until the reform
era, although its form and interpretation always changes with the times.

Based on this information, it is clear that Islamic law has a big role and is an indisputable part of national law. In every process of government policy making, whether through the legalization of national laws, regional regulations, or other policies, Islamic law has great relevance. Therefore, the existence of skilled and competent human resources in carrying out ijtihad to accommodate the principles of Islamic law in every legal formation is very important.

In facing society's progress and openness to technology, the application of Islamic law in Indonesia requires serious attention. Not all aspects of Islamic law can be applied directly, some require a familiarization process or involve political aspects of government (Zainuddin, 2019). In Indonesia, Islamic law is recognized as a source of law along with customary law and continental European law. Islamic law has a distinctive philosophical foundation as its basis, and the principle of benefit is one of the main philosophical foundations in Islamic Law (Sarifudin, 2019).

The development of a national legal system should be a common goal of all elements of government to create a structured and orderly legal system, which aims to develop better national law. The progress of the national legal system of course involves input from various levels of society in evaluating the implementation of the current legal system (Adhayanto, 2014).

The national legal system in Indonesia, which is based on Pancasila and the 1945 Constitution and is realized through national legal politics, refers to various legal systems that have been implemented by Indonesian society (Muhlizar, 2019). Therefore, the evolution of the Indonesian legal system, which is influenced by developments in society, has led to the formation of a legal system that reflects the reality of society's life itself.

Therefore, national legal development must achieve a balance between what should be and what is expected, combining theory and practice. This does not only apply on paper, but must be the real result of national legal development planning, and must be implemented as well as possible, in accordance with the spirit stated in the preamble to the 1945 Constitution. Progress in the national legal system is expected to be able to cover all groups of society, regardless of class, race, ethnicity or religion, which is part of the concept of the Unitary State of the Republic of Indonesia. This merger in the development of the national legal system is expected to create an even better legal system, in line with the motto "Bhinneka Tunggal Ika" (Adhayanto, 2014).

The importance of research on the role of Islamic law in the development of national law is very great, especially in Indonesia, where the majority of the population is Muslim. Even though Islamic Law has been recognized as a source of law, there are still many aspects of Islamic Law that have not been fully integrated into the national legal system, especially regarding differences of opinion in the interpretation and implementation of Islamic law, especially in the civil and criminal realms.

It is hoped that this kind of research can provide a deeper understanding of how the contribution of Islamic Law can improve the development of the national legal system. More than that, it is hoped that this research will be able to strengthen the legitimacy and authority of national law in the eyes of the public by emphasizing the role of Islamic Law as an important asset in efforts to build a better national legal system.

**Methods**

This research uses a literature review method which carries out qualitative data analysis using normative, sociological, historical and philosophical approaches. Data is collected from primary and secondary sources, then analyzed to answer the problems studied.

This approach allows a comprehensive understanding of the study of Islamic law and national law, based on relevant literary sources. Various literature and documents
related to the integration of Islamic law in the national legal system were searched, examined and studied through literature study methods. Next, descriptive-qualitative analysis is used to gain a deeper understanding of the topic.

**Results**

**Transformation of Islamic Law into National Law**

The transformation of Islamic law into a national legal framework is often part of national development goals in the legal realm, especially in the context of national legal material. However, the effectiveness of law implementation and enforcement in society depends on four main elements according to (Pardjaman, 2017):

1. A legal system that ensures certainty, protection and legal order with a focus on justice and truth.
2. Law enforcers who are competent and have the ability to implement the law and understand the essence of justice.
3. Public concern for the law which emphasizes respect for and obedience to applicable laws. Public concern for the law which emphasizes respect for and obedience to applicable laws.
4. The necessary infrastructure and facilities, both in the form of institutions and physical facilities.

Apart from that, based on the findings of (Hidayah et al., 2020) which states that in Indonesia, Islamic Law exists through a transformation process which aims to integrate its principles into the National Legal framework. This harmonization is intended to regulate Muslim society in Indonesia, provided that these regulations do not conflict with the basic principles of the state and the 1945 Constitution of the Republic of Indonesia. This Islamic law was then combined with national law in the Compilation of Islamic Law (KHI), which indicates the integration of Islamic legal principles into Indonesia's positive legal framework which is in accordance with the basic principles of the state.

In line with this, the substantial insertion of Islamic legal principles into statutory regulations without explicitly stating them as part of Islamic law is more in line with the spirit of the Unitary State of the Republic of Indonesia (NKRI) as reflected in the Preamble to the 1945 Constitution. This makes the transformation of the principles of Islamic law more strategic than the need for formal legal recognition of Islamic law.

Many principles of Islamic law are in line with and have been adopted in Indonesian national law. Three specific principles of Islamic law require a more in-depth review to update Indonesian national law, namely the principle of fahmulmukallaf (understanding of responsible individuals), the principle of forgiveness in the criminal system, and the principle of retroactive invalidity of laws (Imron, 2016).

Furthermore, regarding the transformation of Islamic law from the results of proprietary research (S. Gunawan, 2020) states that the increasingly complex challenges that arise in society, the government needs to find the right solution from the various existing laws to create regulations that can handle various problems that arise in the midst of -in the middle of society. This is one of the main reasons that encourages the incorporation of Islamic law into national law. Therefore, it is not surprising that currently many Islamic laws have been recognized and strengthened as part of state law, as stated in Law Number 7 of 1989 concerning Religious Courts.

Based on this explanation, it can be concluded that the transformation of Islamic law into Indonesian national law is an important part of legal development. This involves the integration of Islamic principles into the existing legal framework, ensuring conformity with the basic principles of the state. The importance of this process lies not only in formal recognition, but also in the insertion of Islamic legal principles into regulations without explicitly mentioning them. Several principles of Islamic law have been adopted in national law, but there are some that need deeper
review for legal reform. The complexity of problems in society encourages the need for solutions from various legal sources, including Islamic law, to overcome the problems that arise. The incorporation of Islamic law into national law is considered important in creating responsive regulations.

The Role of Islamic Law in National Legal Development

The role of Islamic Law in the development or formation of national law in Indonesia has great significance. As the majority religion in Indonesia, Islamic law has a strong impact in shaping the legal norms and values applied in the national legal system. Although the application of Islamic Law in the form of positive law is limited to aspects of private law, especially in economic transactions, in terms of public law, its implementation is still at the aspiration stage and has not yet become an official part of the law (Ahyani et al., 2021).

Islamic law is considered universal because it is related to the Islamic religion which has a global scope. The development of a national legal system must be the government’s common goal to create a structured legal system, based on Pancasila and the 1945 Constitution, and based on the various legal systems that exist in Indonesian society. The development of the Indonesian legal system is driven by changes in people’s lives, which lead to the creation of laws that suit the realities of people’s lives (Simamora et al., 2023).

As proof that Islamic law is still relevant in Indonesian national law, several regulations such as the Basic Agrarian Law no. 5 of 1960 emphasized the role of Islamic law as a source of national agrarian law. Likewise, the main law on judicial power no. 14 of 1970 confirms that Indonesia’s national justice system includes general, military, religious and state administrative courts. Thus, legal regulations that are rooted in the principles of Islamic law and have grown within Indonesia's social structure over the years have formed a positive legal environment in this country. This is the result of a balanced combination of Islamic legal principles (shari’ah) and traditional Indonesian wisdom (Ikhwan & Daudy, 2019).

However, based on the results of (Najib, 2020) the adaptation and adjustment of Islamic law into the national legal framework has experienced fluctuations because it is influenced by political dynamics in each period of government. When entering the reform period, the integration of Islamic law into the national legal framework showed significant developments. This development is strongly influenced by political dynamics, where the legislative process involves political parties, including those based on Islamic principles, which ultimately results in national laws that are rooted in the principles of Islamic law.

In addition, efforts to accommodate Islamic law also involve adopting Islamic values into national law, although often without the label "Islamic law". Especially in the regulation of ethics and morals, in formulating national laws which aim to build laws that are unique to Indonesia. However, building a solid legal system must be done without political intervention or governing power. The development of a strong legal system will support effective governance. Building a country by paying attention to social aspects in a democratic manner is the key to ensuring the welfare of the nation as a whole.

The Indonesian government also recognizes the importance of Islamic Law in the national legal framework. This can be seen from the recognition of Islamic legal institutions such as the Religious Courts and Islamic legal educational institutions. In national laws and regulations, the principles of Islamic law are also integrated in many aspects of life, including marriage, inheritance, sharia economics, and dispute resolution.

Even the Dutch East Indies Government recognized several religious laws in legal practice, such as the establishment of an Islamic religious court and a religious affairs office for Muslims. In the context of Pancasila, Indonesia's national legal system which is based on religious values can be considered as an elaboration of Pancasila as
the foundation of state philosophy. Even though Pancasila is considered the basis of state philosophy, it is not the state ideology because in a democracy ideological diversity is valued (A. Manan, 2016).

In line with the explanation above, according to (Kaco, 2020) in Indonesia, the application of Islamic Law must be adapted to the needs of the local community. This principle includes the recognition that customary law must not conflict with Islamic teachings. Apart from that, it also discusses various legal cases in the Indonesian context through legal thinking. These issues include various things such as the establishment of an Islamic state, leadership of women and non-Muslims, the relationship between Islamic law and positive law, integration between Islamic law and customary law, and many more.

It can be concluded that in the context of national legal development in Indonesia, Islamic Law has a significant impact. Although its implementation in positive law is limited to private aspects, especially in economic transactions, its influence in shaping legal norms and values of the legal system the national cume is very large. There have been efforts to adapt and integrate Islamic law into the national legal framework, but this has experienced fluctuations due to political dynamics in various periods of government. However, there is recognition of the principles of Islamic law in many aspects of life such as marriage, inheritance, sharia economics and dispute resolution. Building a strong legal system, without political interference, is the key to supporting effective governance, while taking into account democratic values and ideological diversity in Indonesian society. Adaptation of Islamic Law must also take into account the local context and respect customary law, as well as consider issues such as the establishment of an Islamic state, women and non-Muslims, the integration of Islamic law and customary law, which are relevant within the Indonesian framework.

Challenges and Obstacles to the integration of Islamic Law with National Law

The integration of Islamic Law into National Law in Indonesia faces challenges and obstacles that need to be overcome in order to achieve efficient harmonization. One of the main challenges is the wide variation in interpretations of Islamic Law. With the existence of various schools of thought and interpretations, there are different approaches to applying the principles of Islamic Law. Therefore, understanding and dialogue between ulama, intellectuals and other stakeholders is needed to achieve an interpretation that is widely accepted by the Muslim community in Indonesia. Apart from that, there are internal obstacles in adopting and confirming Islamic criminal law in Indonesia due to differences in views among Muslims, including experts and practitioners. Some argue that Islamic criminal law should remain an internal part of the personal lives of Muslims, without becoming part of state law. This perspective reflects differences in views regarding the role of Islamic criminal law in Indonesian society (Abdillah & Suryani, 2019).

According to the results of (Kasmad, 2020), Islamic law is rooted in the Koran and hadith, while the legal system that gives color to national law includes the western legal system, customary law and the Islamic legal system. Among these three legal systems, Islamic law has greater potential to contribute to the formation of national law in the future. This is due to the majority of the Indonesian population embracing Islam and because the western/colonial legal system has been stagnant since Indonesia’s independence. Apart from that, customary law also does not show a significant contribution to the development of national law.

Therefore, the main hope in forming national law is through contributions from Islamic law. This is because of the existence of a Muslim majority in Indonesia and because the western legal system has not developed any more since independence, while customary law has also not made a significant contribution to the development of national law.
The results of (Mudzhar, 2012) explain that the first challenge in the study of Islamic law lies in the views of legal researchers who still view Islamic law as a study limited to fiqh andulus al-fiqh. As a result, the proportion of normative Islamic law has become dominant, but the focus is still on conventional legal literature and has not yet penetrated into the non-conventional realm. Apart from that, research in the field of Islamic legal philosophy also does not receive adequate attention, far below the attention given to normative Islamic legal research. However, the research area that has received the least attention from researchers is the empirical study of Islamic law. This kind of research requires the development of auxiliary science or cross-disciplinary studies in its implementation.

The development of national law that is rooted in religious values in Indonesia is a natural necessity, considering that quality law must rely on the values, realities and aspirations of society. With Pancasila as the foundation of state philosophy, the principle of belief in one and only God is the main foundation in the development of religious-based national law. This is manifested in the formation of laws, legal services and law enforcement.

However, it is necessary to pay attention to the diversity and sensitivity of religious principles. Therefore, it is important to maintain caution, mutual respect and democratic principles in the process of developing national religious law. Apart from that, the development of national law which originates from religious values often faces challenges, which can be seen from the low quantity and quality of legal formation, as well as corrupt legal enforcement and services and ignoring ethical/moral aspects as religious values. Therefore, awareness of ethical aspects is needed in developing religious national law, with the aim of realizing social justice for all Indonesian people (B. Manan et al., 2021).

In a legal system like this, Islamic values are often marginalized by the struggle for political interests and the control of power by law makers. In the process of legal regulation, aspects originating from God’s teachings and prohibitions in the holy books are often not utilized or ignored. As a result, it seems that human power is more dominant in determining the direction of applicable law than God’s power (Prasetyo, 2020).

Apart from that, the incorporation of Islamic Law must also be in line with constitutional principles that protect religious freedom and guarantee justice for all citizens. The process of harmonizing Islamic Law with the constitution requires careful thought to find the right balance point between Islamic values and the principles respected in the national legal system. This requires an active role from legal experts, ulama, and other stakeholders to reach an agreement that respects both principles. One of the three sources of national law in Indonesia is Islamic law. Pancasila, as the basis for the positivization of Islamic law, allows Islamic law to become part of the national legal basis. This is stated in Article 28 E (1), paragraph (2), and Article 29 of the 1945 Constitution (Maslul, 2019).

1. Challenges in efforts to legislate Islamic law in Indonesia can be divided into three areas: structural, substantial and cultural. Structurally, there is debate among Muslims regarding the appropriate approach to implementing Islamic law. Substantial challenges involve complexity and controversy regarding the substance of Islamic law, including the harsh and militant aspects demonstrated by some groups. Meanwhile, cultural challenges relate to the diversity of Indonesian society and resistance from non-Muslim groups who are worried that Islamic law legislation could disrupt unity and unity. Apart from that, the low political will and awareness of the Islamic community regarding the application of Islamic law is also a challenge in itself (Kasmad, 2020).

2. So based on the results of the researchers, it can be concluded below:

3. Varying interpretations of Islamic Law: Various madhhabs and interpretations create different approaches in applying the principles of Islamic Law. Understanding and dialogue are needed to achieve an interpretation that is widely
accepted by the Muslim community in Indonesia.

4. Potential of Islamic Law in national law: Even though Islamic law is rooted in the Koran and hadith, in the context of forming national law, Islamic law has great potential. Western legal systems, customary law and Islamic legal systems are present in the formation of national law, but Islamic law is expected to make a greater contribution because the majority of the Indonesian population is Muslim.

5. Challenges in the study of Islamic Law: The main challenges include a limited view of fiqh and ulus al-fiqh, a lack of research in the philosophy of Islamic law, and a lack of empirical research in the study of Islamic law.

6. Formation of religious national law: The hope for the formation of religious-based national law in the Indonesian context must pay careful attention to religious values and still maintain democratic principles and ethical/moral aspects.

7. Political struggles and constitutional aspects: Islamic values are sometimes marginalized by political interests and the influence of law makers. Harmonization between Islamic Law and the Constitution requires careful thought to find the right balance.

8. Challenges to Islamic law legislation: These challenges involve structural, substantial and cultural aspects, including debates about the appropriate approach, the complexity of the substance of Islamic law, as well as resistance from non-Muslim groups who are concerned about potential disruptions to unity and unity.

Conclusion

1. Transformation of Islamic Law in the Context of Indonesian National Law: Integration of Islamic legal principles into the national legal framework is an important part of legal development. This process ensures the compatibility of Islamic principles with the basic principles of the state without having to explicitly state them.

2. The Important Role of Islamic Law in the National Legal System: Although limited to aspects of private law, the influence of Islamic Law in shaping the norms and values of Indonesian national law is very large. Recognition of the principles of Islamic Law is reflected in many aspects of life, from marriage to dispute resolution.

3. Challenges in Integrating Islamic Law with National Law: Variations in interpretation, complexity of the substance of Islamic law, as well as structural, substantial and cultural challenges are the main obstacles. There is also resistance from non-Muslim groups and political struggles that influence this integration process.

4. Expectations for the Contribution of Islamic Law in the Development of National Law: In the midst of complexity and challenges, there are great hopes for the contribution of Islamic law in the development of Indonesia’s national legal system in the future. This is caused by the majority of the Indonesian population embracing Islam and the stagnation of other legal systems.

5. Need for Balance and Careful Dialogue: Harmonization between Islamic values and constitutional principles requires careful thought and extensive dialogue between ulama, scholars and other stakeholders to reach an agreement that respects both principles.

By considering these aspects, the integration of Islamic law into Indonesian national law is an effort that requires broad agreement, deep thought, and recognition of the complexity and diversity of Indonesian society.

Suggestion

1. Wide Dialogue and Consultation: It is important to hold dialogue and consultation involving various relevant parties, including ulama, intellectuals, legal practitioners and the general public. This can help in achieving broader
understanding regarding the interpretation and implementation of Islamic law within the national legal framework.

2. Deep Education and Understanding: Expanding education and understanding of Islamic law and national law among the community. Deeper education will help raise awareness of the importance of integrating Islamic law with national law, as well as its impact on society as a whole.

3. Balance between Religious Values and Constitutional Principles: It is important to find the right balance between religious values in Islamic law and constitutional principles that protect freedom and justice for all citizens. This requires careful thought and open dialogue.

4. In-depth Study and Research: More in-depth research and study regarding Islamic law, not only in its normative aspects but also in the philosophical and empirical realms. This will help broaden insight and understanding of Islamic law in the context of national law.

5. Active Community Participation*: Encourage community participation in the process of forming and implementing national laws that reflect Islamic values. This can be done through various participatory forums that allow the public to provide their input and views.

References


