

## QUO VADIS OF ISLAMIC LAW IN NATIONAL LAW

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### Abstract

*This paper is a paper that concentrates on issues related to Islamic law in which there is civil law and others, Indonesia as a state of law and a state with the philosophy of Pancasila tries to provide space and movement for Islamic law and other laws, majority and minorities in the context of the state are often When it is influential in providing this space, there are three important questions. First, what is the concept of Islamic law in Indonesia? how is Quo Vadis Islamic law in the national legal system? How is the implementation of Islamic law in the national legal system in the area of religious courts? By using a content analysis approach to answer the concept of Islamic law in the national legal system, and its implementation in religious courts in Indonesia, the results of this paper are the first concepts of Islamic law in Indonesia.*

**Keywords:** *Islamic law, national law, and quo vadis Islamic law*

### PRELIMINARY

If you talk about Islamic law in the middle of national law, then the thing that becomes the center of attention is the position of Islamic law in national law. The Indonesian legal system as a result of its historical development is multiple. it is called this because in Indonesia itself has or adheres to a legal system which has its own characteristics and

structure. The system is a system of customary law, Islamic law and western law. Since the presence of Islam since the 7th century AD Islamic law has been practiced and developed in the community and Islamic courts. Hamka presented several facts that he found in the works of Indonesian Islamic law experts. For example, Shirat al-Thullan, Shirat al-Mustaqim, Sabil al-Muhtadin, Kartagama, Syainat al-Hukm, and so on.<sup>1</sup> The written work is still in the style of fiqh discussion, which has the character of legal doctrine and the Indonesian fiqh system oriented to the teachings of the Imam of the School.

During the reign of Sudan and the Islamic Kingdom, religious courts were officially established. There are things like courts in Java. Islamic Sultanate Syar'iyah Court of Sumatra. Qadi Courts in the Sultanate of Bangal and Pontianak. However, this is very unfortunate, even though during the Sultanate there was an official religious court, and the priest acted as a consultant and judge, he never wrote a systematic positive law book. The applicable law is still taken from the content of non-religious teachings. It was not until 1760 that the VOC ordered DW Freijer to write this law, so that it was called the "Freijer Outline". The outline was used as a legal reference for resolving disputes between Muslim communities in VOC-controlled areas.<sup>2</sup> Use of the Summary Flyer did not last long. In 1800, the VOC transferred power to the Dutch East Indies government. At the same time, it disappeared and drowned out the outline. Based on the acceptance theory or conflict theory of Snouck Hurgronje and van Vollenhoven, a new legal politics was born. Since then, Islamic law has been systematically isolated. Customary law replaced it. The Dutch East Indies government tried to implement only two legal systems, namely the customary law of the indigenous groups and the western method of the European group. National Bulletin No. 116 of 1937 establishes a final compulsory measure to abolish the role of Islamic law. This regulation is the result of the efforts of the Ter Haar Committee and contains the following recommendations: (1) Islamic inheritance law has not been fully accepted by the community. (2) Revoke the authority of the Raad Religion to decide on inheritance cases and transfer said authority to Landraad. (3) Religious courts are supervised by Landraad. (4) If there is no law enforcement power from the head of Landraad, then the decision of the Religious Court will not be implemented.<sup>3</sup> After Indonesian independence, although the transitional rules stipulated that the old laws remained in effect as long as their souls did not conflict with the 1945 Constitution, all Dutch government regulations based on the acceptance theory were no longer valid, because their souls were the opposite of 1945: the theory of acceptance had to be withdrawn, because it was against the Koran and The Sunnah of the Prophet. Hazarin calls the acceptance theory the devil's theory. Based on this view, Hazarin proposed a theory which he called the receptor withdrawal theory. The main points of Hazarin's thoughts are: 1) Since 1945, with the independence of the Indonesian nation and the enactment of the 1945 Constitution, the acceptance theory has been invalidated and is no longer valid, and has been withdrawn from the Indonesian national system. 2) According to Article 29 paragraph 1 of the 1945 Constitution, The Republic of Indonesia is obliged to administer Indonesian national law in accordance with religious law. The state has a state obligation for this. 3) Religious laws that enter and become Indonesian national law are not only Islamic law, but also other religious laws for adherents of other religions. Religious law in the field of civil law has been absorbed, and criminal law has been incorporated into Indonesian national law. This is Indonesia's new law based on Pancasila. Besides Hazarin, a figure who also opposes the theory of acceptance is Sayuti Thalib who wrote the book "The Opposite Acceptance: The Relationship Between Customary Law and Islamic Law." This theory contains the idea that customary law only applies if it does not conflict with

<sup>1</sup> Hamka, *Between Facts and Imagination "Tuanku Rao"*, Jakarta: Bulan Bintang, 1974, p. 324

<sup>2</sup> Supomo and Djoko Sutowo, *Political History of Customary Law 1609 - 1848*, Jakarta: Djambatan, 1955, p. 26

<sup>3</sup> M. Yahya Harahap, *Information on Compilation of Islamic Law: "Positivizing the Abstraction of Islamic Law"*, in, *Compilation of Islamic Law and Religious Courts in the National Legal System*, Jakarta, Logos, 1999, p. 27

Islamic law. Through this theory, the spirit of the Preamble and the 1945 Constitution defeats Article 134 paragraph 2 of the Indian Constitution.<sup>4</sup>

According to Ismail Sunny, after Indonesia's independence and the 1945 Constitution became the basis of the state, although it did not contain the seven words in the Jakarta Charter, the theory of acceptance was declared invalid and lost its legal basis. In addition, Islamic law applies to the Islamic state of Indonesia based on Article 29 of the 1945 Constitution. This era is called "bright" and is a period of acceptance of Islamic law as a persuasive source.<sup>5</sup> In addition, with the inclusion of the "Jakarta Charter" in the Presidential Decree of the Republic of Indonesia on July 5, 1959, this era can be said to be the era when Islamic law was accepted as a source of authority. Therefore, it is often said that the "Jakarta Charter" is an animation of the "UUD 1945" which is a series of unification in the 1945 Constitution. The term animation can have a negative meaning in a certain sense, because the laws of the Republic of Indonesia cannot be enforced contrary to Islamic law. In a positive sense, this means that Muslims must apply Islamic law. This requires laws to apply Islamic law to domestic law.

### ISLAMIC LAW CONCEPT IN INDONESIA

The term Islamic law cannot be found in the Koran and any Islamic legal documents. The words in the Qur'an are shari'ah, fiqh, Allah's law and its roots. The term Islamic law is a translation of the term "Islamic law" in Western literature. In the interpretation of Islamic law in Western literature, a definition of Islamic law is found, namely: the entire book of Allah which governs every aspect of the life of every Muslim.<sup>6</sup> From this definition, the meaning of Islamic law is closer to the meaning of Islamic law. Hasbi Asy-Syiddiqy provides a definition of Islamic law through "a collection of legal efforts to implement Islamic Sharia in accordance with the needs of society". In this definition, the definition of Islamic law is closer to the meaning of "qualitative". In order to explain the meaning of Islamic law more clearly, it is necessary to first understand the meaning of the term "law". In fact, law does not have a perfect meaning. However, to get closer to an understanding that is easy to understand, even though it still has weaknesses, it is necessary to disclose the definition of Muhammad Muslehuddin in the Oxford English Dictionary. According to him, law is "the body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects".<sup>7</sup> (A set of rules, whether derived from formal rules or customary rules, is considered by a particular community and state to be binding on its members). When law is related to Islam, then Islamic law means: "A set of rules based on the revelations of Allah and the Hadith of the Prophet, involving the actions of Mrs. Mukalla, and these rules are considered and are considered to apply to all Muslims. It can be understood from the above definition that Islamic law includes Islamic law and Fiqh law, because it contains the meaning of syarak and fiqh.

### NATIONAL LAW: PRELIMINARY STUDY

National law is a law formulated by the Indonesian state after Indonesian independence, and applies to Indonesian citizens, especially citizens of the Republic of Indonesia, to replace colonial law. It is not easy to realize the national law of the Indonesian nation which consists of various ethnic groups with different cultures and religions, coupled with the diversity of laws left by the former colonial government. Enacting national law will apply to all citizens, no matter what religion they follow, they must proceed with caution, because among the religions accepted by the citizens of the Republic of Indonesia, there are religions that cannot be separated from the law. For example, Islam is a religion that contains laws that regulate the relationship between humans

<sup>4</sup> Sayuti Thalib, *Receptie a Contrario*, Jakarta: Bina Aksara, 1985, p. 37-40

<sup>5</sup> Ismail Sunny, "Islamic Tradition and Innovation in Indonesia in the Field of Islamic Law", in, *Islamic Law in Indonesian Society*, Cik Hasan Bisri (ed), Jakarta: Logos Publishing, 1988, p. 96

<sup>6</sup> Joseph Schacht, *An Introduction to Islamic Law*, Oxford: University Press, 1964, p. 1

<sup>7</sup> US. Honrby, *Oxford Advanced Learner's Dictionary of Current English*, Britain: Oxford University Press, 1986, p. 478



and other humans and social objects. In a true sense, Islam is a legal belief. Therefore, in the process of developing national law in a country with a majority population, Indonesia must really pay attention to the content of religious law.

For that, we need clear insights and smart policies. According to Minister of Justice Ismail Saleh (Ismail Saleh) (1989) when planning the development of national law, because national law must be able to protect and protect all nations and states in all aspects of life, we must use the Trinity. National opinions cannot be separated from one another, namely: national knowledge, island knowledge and knowledge of diversity. From a national perspective, the national legal system must be fully adapted to the wishes and interests of the Indonesian people. According to the Minister of Justice, this kind of state view is not a closed view of state, but rather a willingness to pay attention to the interests of future generations and be able to absorb the values of modern law.<sup>8</sup>

Considering that the development of national law also includes knowledge about an archipelago that wants to establish a national law, it is necessary to make efforts that are as united as possible in the field of law. This means that all groups of society will be regulated by the legal system, the national legal system. However, for the sake of judicial justice, the Minister of Justice said that in order to implement national law based on these two opinions, it is also necessary to pay attention to differences in socio-cultural backgrounds and the legal needs of certain groups in society. Therefore, apart from these two views, the development of national law must also adopt diverse views in terms of diversity. Using these insights, the unification of laws that Archipelago Insights hopes for should ensure that demands, the values and needs of public relations can be incorporated into the national legal system. With this insight of *Bhinneka Tunggal Ika*, we must respect the diversity of ethnicities, cultures and religions as assets for national development, as long as they do not endanger the unity and integrity of the nation.

By using these three insights, various principles and principles of Islamic law, customary law, and old Western methods will be integrated at once and become an inseparable part of domestic law, both written domestic law and written national law. Or customary law. Regarding the aforementioned position of Islamic law, the Minister of Justice stated, among others: "It is undeniable that the majority of Indonesians are Muslim". The Minister of Justice stated that Islam has Islamic law, which basically covers two areas, namely (1) the area of worship and (2) the area of *Muamara*. The order in the area of worship is detailed. There is no detailed introduction of the *Muamara* order or any aspect of people's lives. What is found in this last area is only the principle. The development and application of the principles of the *Muamara* area are fully the responsibility of the national administrators and governments, namely *ulil amri*. Since Islamic law plays an important role in shaping and advancing the social order of Muslims and influencing all aspects of their lives, the best way is to scientifically seek the conditions for converting Islamic legal norms into national law, according to *Pancasila* and the Minister of State of the Republic of Indonesia in 1945. Justice that is regulated in the constitution related to legal needs, especially the legal needs of Muslims. According to Coordinating Minister for Political, Legal, and Security Affairs, Islamic law contains many general principles that can be used to formulate national laws. Since Islamic law plays an important role in shaping and advancing the social order of Muslims and influencing all aspects of their lives, the best way is to scientifically seek the conditions for converting Islamic legal norms into national law, according to *Pancasila* and the Minister of State of the Republic of Indonesia in 1945. Justice that is regulated in the constitution related to legal needs, especially the legal needs of Muslims. According to Coordinating Minister for Political, Legal, and Security Affairs, Islamic law contains many general principles that can be used to formulate national laws. Because Islamic law plays an important role in shaping and advancing the social order of Muslims and

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<sup>8</sup> Quoted by M. Daud Ali, in the Development of Material Law for Religious Courts, see the Journal of *Mimbar Hukum: Actualization of Islamic Law Number 17 Years V (Nov - Dec 1994)*, Jakarta: Al-Hikmah and the Directorate of Development of Islamic Religious Courts, 1994, p. 34

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### QUO VADIS OF ISLAMIC LAW IN NATIONAL LAW

In order to advance and develop domestic law, Islamic law has at least contributed greatly to his soul. Several arguments reinforce this statement. First of all, the first books on marriage in 1974 were given official numbers. Article 2 of the law stipulates that if the marriage is carried out in accordance with the respective religious law, then the marriage is valid. At the same time, Article 63 states that what is meant by law is a religious court for Muslims. Second, in Law Number 2 of 1989, the Law on the National Education System regulates that in the framework of the development of all mankind, humans believe and obey God Almighty, have noble character, are knowledgeable and knowledgeable, and are righteous. Mentally healthy Having a strong personality and a sense of independence, and have a sense of social and national responsibility. Third, Law No. 7 July 1989 concerning Religious Courts. This law proves that religious courts must exist, develop and develop in Indonesian soil. This proves the contribution of Muslims as the majority. Fourth, although the "Islamic Law Collection" (KHI) was not a law, it was the first Presidential Instruction in 1991. This compilation is very helpful for judges, especially religious courts. Fifth, Government Regulation Number 28 of 1978 concerning Representation of Land Ownership, and Law Number 5 of 1960 which are Indonesia's main regulations regarding land issues. As its implementation, the Regulation of the Minister of Religion 1978 on the implementation of PP Decree No. 28 of 1978 was issued. For this reason, the following laws and regulations were issued: 1. Decree of the Minister of Religion No. 73 of 1978, which gave the authority to decentralize the authority to the Head of Regional Office of the Provincial Ministry of Religion / equivalent throughout Indonesia to appoint / release heads of offices. KUA region as PAIW; 2. Instructed by the Minister of Religion and the Minister of Home Affairs. January 1, 1978, concerning the implementation of government regulations February 28, 1978; 3. Instruction of the Minister of Religion Number 3 of 1979 concerning Guidelines for the Implementation of the Minister of Religion Number 1, Resolution Number 73 of 1978 concerning Granting of Authority in Charge of Kanwil Dep. Appointment / dissolution of religion / provincial equality of each person in charge of KUA Kec. As PPAIW; 4. "Regulation of the Director General of Islamic Guidance and Hajj Affairs." D.II / 5 / Ed / 14/1980 concerning Use of Seals, and attached with the State Administration of Taxation Letter Number S-629 / PJ.331 / 1080, concerning the Sign of the Minister of Finance dated the provisions of the Regulation of the Minister of Religion No. 270 Provision 1 of 1978 concerning implementation of PP regulations. 28 years 1977; 5. Regulation of the Minister of Home Affairs Number 6 of 1977 concerning Procedures for Land Registration for Land Ownership. 6. Letter from the Director General of Islamic Community Guidance and North Korea Affairs. D.II / 5 / Ed / 07/1981 concerning Registration of Land Ownership Representatives 7. Letter of the Director General of Islamic Community Guidance and Hajj. D.II / 5 / Ed / 11 / 1981 Instructions for filling in the number on the land ownership representative form.<sup>9</sup>

<sup>9</sup> M. Yasir, Implementation of Waqf in Indonesia, Problems and Solutions, Faculty of Sharia UIN Jakarta; Ahkam Journal No. 16 / VII / 2005. p. 275





The history of the Indonesian legal process, the existence of Islamic law in domestic law is a struggle for survival. Ontology affirms the past, present and future state of Indonesian national law, and affirms that Islamic law is both written and unwritten in Indonesian national law. He exists in all areas of legal life and legal practice. The theory of existence related to Islamic law is a theory that explains the existence of Islamic law in Indonesian national law, namely: (1) Yes, as long as it is an integral part of Indonesian national law; (2) From recognized independence. In terms of gender, power and authority have the status of national law; (3) In terms of national law and Islamic legal norms, it can be used as a filter for data on Indonesian national law;

Therefore, in essence the status of Islamic law in national law is a subsystem of national law. Therefore, Islamic law also has the opportunity to contribute to the formation and updating of national laws, although it must be admitted that the problems and obstacles can never be overcome. From a sociological point of view, the status of Islamic law in Indonesia involves public and community awareness of diversity, which is more or less related to religious issues and legal norms and other legal awareness, and always requires compliance. Therefore, it is clear that the relationship between the two is very close. Both require members of the public to be obedient and obedient. Both must develop towards, harmony and balance. Two people are not allowed to come into conflict with each other.

In the reform era, several laws were born that could strengthen Islamic law, including: Law Number 17 of 1999 (State Gazette of the Republic) on the Implementation of Korean Law was promulgated and promulgated in Jakarta on May 3, 1999, Republic of Indonesia 1999 No. 53), and the Republic of Indonesia No. 3832). Indonesia is one of the countries with the largest number of pilgrims. This is because the quota set by Saudi Arabia is 1% of the total population of a country. The population of Indonesia is around 250 million, so the quota for North Korea is around 250,000. For North Korea to operate smoothly and seamlessly at home and abroad, good management is required. In addition, North Korea is carried out abroad which is more than 10,000 miles from Indonesia, involving many people and departments, and done simultaneously in the same place with millions of people from all over the world. For that, the government must participate directly in its implementation, because it involves the good name of the Indonesian people.

In order to support the effective, efficient and successful implementation of Hajj, the government issued Law Number 17 of 1999 which regulates the Hajj to Ha. Furthermore, the Decree of the Minister of Religion Number 224 of 1999 concerning the Implementation of North Korean Worship and Umrah. Previously, during the Dutch colonial period, Pilgrim Law No. 698 (Pelgrims Ordonantie Staatsblad) (including amendments and additions) of 1922 and Pelgrims Verodening of 1938 were adopted.<sup>10</sup>

"North Korean Administrative Law" consists of 15 chapters and 30 articles. On a global scale, the contents are as follows: Chapter One General Provisions (Articles 1-3), Chapter Two Principles and Objectives (Articles 4-5), Chapter Three Organizations (Articles 6-8), Chapter Four (Organizational Expenditures (Article 9 ) -11)), Chapter 5 Registration (Articles 12-14), Chapter 6 Development (Article 15), Chapter 7 Health (Article 16), Chapter 8 Immigration (Article 17), Chapter IX Transportation (Articles 18-20), X Carry-Ons (Article 21), Chapter 11 Accommodation (Article 22), Chapter 12 Special Haj Service Organizations (Articles 23-24), Chapter 13 Organizing Umrah Worship (Articles 25-26), Chapter 14 Criminal Regulations (Articles 27-27 ) 28), Chapter 15 Transitional Provisions (Article 29) and Chapter 10 Closing Clause (Article 30). The law on Zakat Administration was passed and promulgated in Jakarta on 23 September 1999, Law Number 36 Year 1999 regarding Zakat Administration ("State Gazette of the Republic of Indonesia", 1999, Number 164, "State Gazette of the Republic of Indonesia. Indonesia" Supplement No. 3885). In accordance with Article 5 paragraph (1), Article 20 paragraph (1), Article 29, and Article 34 of the 1945 Constitution, the state guarantees that its citizens receive religious education, protect the poor, and realize the welfare of the Indonesian people. , The government needs to develop judicial

<sup>10</sup> Suparman Usman, *Islamic Law, Principles and Introduction to Islamic Law Studies and Indonesian Legal System*, Jakarta: Gaya Mediaprata, 2001, p. 187

documents to support this work. Then came Law Number 38 Year 1999 regarding Zakat Management. To implement this law, there has been a Presidential Decree Number 8 of 2001 concerning the National Zakat Amir Committee, which contains three components for the management of Zakat, namely the Implementing Body, the Advisory Committee and the Supervisory Committee. Prior to the enactment of the aforementioned law, since the Dutch colonial period there had been a law relating to zakat, namely *Bijblad* No. 2 of 1893 and *Bijblad* No. 6200 dated February 28, 1905).<sup>11</sup>

In commemoration of the year 1422 H Nosal Quran, Indonesian President Megawati Soekarnoputri (Megawati Soekarnoputri) paid a tax of 2.5% to taxpayers who pay zakat through a bank account designated by the national zakat agency. be socialized. In fact, this has been implemented in the State Tax Administration. The Zakat Management Law consists of 10 chapters and 25 articles. The contents of the global scope are as follows: Chapter 1 General Principles (Articles 1-3), Chapter 2 Principles and Objectives (Articles 4-5), Chapter 3 Zakat Management Organizations (Articles 6 to 10), Article Chapter 4 Zakat Collection (Articles 5) 11-15), Chapter 5-Use of Zakat (Articles 16-17), Chapter VI Supervision (Article 7 Sanctions (Article 21), Chapter 8 Other Provisions (Articles 22-23), Chapter 9 Transitional Provisions (Article 24) , Article Chapter 10 (Article 25). Waqf Law Number 41 President Susilo Bambang Yudoyono (State) Bulletin of the Republic of Indonesia 2004 No. 159 was approved and promulgated in the Waqf in Jakarta in 2004 (Bulletin of the Government of the Republic of Indonesia No. 2004 No. 159 No.), land ownership was promulgated in 1997.

In Government Regulation Number 28 of 1997, this regulation only regulates social waqf (general waqf) on land owned by individuals or legal entities. Land donated by this government regulation is limited to land that is owned, and other land rights (such as land use rights, building use rights and usage rights) are not limited. In addition, other goods such as currency, stocks and other goods are not regulated by government regulations. Therefore, the development of Indonesian waqf is quite slow.

Compared to several laws and regulations related to waqf, there are several important new contents. Some of them are related to the Nazar issue, the distribution of waqf assets (*mauquf bih*) and waqf assets (*mauquf'alaih*), as well as the need to form an Indonesian waqf committee. Regarding the Nager issue, because the law regulates not only real estate which is commonly implemented in Indonesia, but also movable assets such as currency, precious metals, securities, vehicles, intellectual property rights and lease rights. Then Nazhirnya also requires the ability to manage these objects.

In this law, waqf property is not limited to property, but must include money, precious metals, securities, vehicles, intellectual property rights, lease rights and other movable assets in accordance with Islamic law and statutory provisions. Applicable laws. Even in this law, the value of net cash must be regulated in a separate section. Article 28 of the law provides that the authorities: provide direction to Nazhir to manage and develop waqf assets; b. Manage and develop waqf assets on a national and international scale; Approve or permit changes in the allocation and status of waqf assets; d. Burn and replace Nagil; e. Approving the exchange of waqf assets; F. Provide advice and considerations to the government in formulating policies in the field of waqf.

Judging from the responsibilities and authority of BWI in the bill, BWI seems to be responsible for developing waqf in Indonesia so that in the future waqf can be used as a waqf task. Therefore, BWI personnel must have competence in their respective fields according to the needs of the agency. One of the important points of the law is that the distribution of religious sites is not only for religious purposes and social facilities, but also aims to promote general welfare by realizing the potential and economic benefits of religious property. As long as its management is in accordance with the principles of management and Islamic economics, it will allow the

<sup>11</sup> Muchsin, *The Future of Islamic Law in Indonesia*, Jakarta: STIH Iblam, 2004, p. 41



management of waqf assets to enter into the field of economic activity in a broad sense.<sup>12</sup> Law Number 41 of 2004 concerning Waqf includes Chapter 11 and Article 71, Chapter One General Provisions (1 Article), Chapter Two Basic Knowledge of Waqf (Article 30), and Chapter III Registration and Announcement of Waqf Assets (Article 8)), Chapter 4 Changes in the Status of Waqf Assets (Article 2), Management and Development of Waqf Assets Chapter 5 (Article 5), Board of Directors of Indonesian Waqf Chapter 6 (Article 15), Chapter 7 Dispute Resolution (Article 1), Article Chapter 8 Development and Supervision (( Article 4), Chapter IX Criminal Clause and Administrative Sanctions (Article 2), Chapter X Transitional Provisions (Article 2), Chapter 11 Final (Article 1).

Law Number 44 of 1999 concerning the Implementation of Regional Privileges of Aceh was passed and promulgated in Jakarta on October 4, 1999 (National Bulletin of the Republic of Indonesia Number 172 of 1999, Supplement to the National Bulletin of the Republic of Indonesia Number 3893). Entering the reform era, he independently published various opinions. The government is also very sensitive to the wishes of the people and a life of democracy that is full of vitality. The desire of the Acehnese people that had not spread during the New Order era received a very large response from the government this time. As a religion, maintaining customs and making ulama play a role as Acehnese people who are highly respected in social life, as a nation and state, must be protected and developed.

Therefore, with the issuance of Law Number 44 of 1999 concerning the Implementation of Special Privileges in Aceh Province, the government finally guaranteed the aforementioned legal certainty for the administration of the privileges of the Azerbaijan people. Law Number 44 Year 1999 contains 5 chapters and 13 articles. Broadly speaking, the contents are as follows: Chapter 1 General Provisions (Article 1), Chapter 2 Authorities (Article 2), Chapter 3 Special Provisions (Articles 3 to 11), Chapter 4 Transitional Provisions (Article 2) Article 22), Chapter 5 Terms of Termination (Article 13). Law Number 18 Year 2001 regarding the Special Autonomy Law for the Special Autonomous Region of Aceh as the Southern Forest Province, Aceh Darussalam was passed and promulgated in Jakarta on August 9, 2001. Number 114, National Bulletin of the Republic of Indonesia Number 4134).

According to the 1945 Constitution, the government system of the Republic of Indonesia recognizes and respects special regional government departments that are regulated by law. With the coming of the reform era and the wishes of the Asian people, the government was granted special autonomy. In this regard, Law Number 18 Year 2001 regarding Special Autonomy for the Special Region of Aceh as the South Cave Province has been promulgated. The law aims to understand the social characteristics and people of Aceh who have a strong Islamic culture. Have a high fighting spirit in fighting for the independence of the Indonesian nation. Therefore, with the coming of the reform era and the wishes of the Asean people. The government grants special autonomy. Therefore, Nanggroe Aceh Darussalam Province Chapter 10 Polda (Articles 21-23), Nanggroe Aceh Darussalam Provincial Prosecutor's Office Chapter 11 (Article 24), Chapter 12 (Articles 25-26) Sharia Court of Nanggroe Aceh Darussalam Province, Chapter 13 Transitional Provisions (Article 27 to 30) and Chapter XIV (Articles 31 to 34). Law Number 18 Year 2001 regarding Special Autonomy for the Special Autonomous Region of Aceh Province, one of which in the field of law has been enacted. Recently, Qanun (Perda) Law Number 13 concerning Gambling was promulgated in 2003, and No 14 Liquor 2003 No. 15 "Heretical Questions and Canned Sentences" has been applied. Chapter 13 Transitional Provisions (Articles 27 to 30) and Chapter XIV (Articles 31 to 34). Law Number 18 Year 2001 regarding Special Autonomy for the Special Autonomous Region of Aceh Province, one of which in the field of law has been enacted. Recently, Qanun (Perda) Law Number 13 concerning Gambling was promulgated in 2003, and No 14 Liquor 2003 No. 15 "Heretical Questions and Canned Sentences" has been applied. Chapter 13 Transitional

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<sup>12</sup> Farida Prihantini, et al, *Islamic Law of Zakat and Waqf Theory and Practice in Indonesia*, Jakarta: Papan Sinar Sinanti & FHUI, 2005, p. 135



Provisions (Articles 27 to 30) and Chapter XIV (Articles 31 to 34). Law Number 18 Year 2001 regarding Special Autonomy for the Special Autonomous Region of Aceh Province, one of which in the field of law has been enacted. Recently, Qanun (Perda) Law Number 13 concerning Gambling was promulgated in 2003, and No 14 Liquor 2003 No. 15 "Heretical Questions and Canned Sentences" has been applied.

Although this is a new addition to the Sharia Banking Bill, Law Number 10 of 1998 (concerning Banking) strengthens the status of Islamic law, as stated in Articles 1, 6, 7, 8, 11, and 13. It is told. These terms describe a dual banking system (traditional and Islamic). Law Number: Decree Number 3 of 2006 concerning Amendments to Law Number 1 dated July 7, 1989 concerning the Religious Courts dated February 28, 2006 dated July 7, 1989 concerning the Religious Courts has been amended. Decree Number 3 of 2006 concerning Amendments to Law Number 1 dated July 7, 1989 (State Gazette of the Republic of Indonesia of 2006 Number 22). Due to changes to Law No.3. On July 7, 1989, a development that no longer fulfills the legal needs of society and the constitutional life of the 1945 Constitution. In accordance with the mandate of Article 24 paragraph (2) of the Constitution, the religious court is the authority of the Supreme Court. Courts and ordinary courts, state administrative courts and other military courts. The same is true of regulation.

Article 10, paragraph 2, regarding judicial power dated April 4, 2004, the judiciary of the Supreme Court includes ordinary courts, religious courts, military courts, and judicial institutions within the national administrative court. Therefore, the one-stop policy applies. Since 2004, the Religious Courts have moved from the Ministry of Religion to the Supreme Court. Wahyu Widiana previously served as Director of Islamic Courts at the Ministry of Religion, but was later withdrawn to the Supreme Court and served as Director General of the Religious Courts.

UU no. 4 of 2004 clearly regulates the transfer of organization, administration and finance from various fields of justice to the Supreme Court. Therefore, according to Law Number 1, the organization, administration and finance of the work of the judiciary within the religious court used to belong to the Ministry of Religion. It was adjusted to Law no. 1 dated 7 July 1989. Law Number 3 of 2006. On 4 April 2004, the existence of a special court established in the judiciary in accordance with the law was confirmed. Therefore, Law no. 2 also regulates the establishment of special courts in religious courts. On March 3, 2006, the Nangroe Aceh Darussalam Sharia Court.

The authority of the religious court originally had the responsibility and authority to review, determine and resolve cases at the first level between Muslims in the field of: marriage b. Inheritance, will and gifts c. Waqf and shadaqah. Based on law number 3 March 2006, its authority in the field of Islamic law and economics is expanded to include: Sharia Banking, Insurance, Sharia Insurance, Sharia Reinsurance and Sharia Interim Securities, Shari'ah Securities, Syari'ah Courts, Shari'ah Pension Financial Institutions (DPLK), Shari'ah Commercial Institutions and Shari'ah Microfinance Institutions. In recent years, the development of Islamic law and economy has indeed developed rapidly. This will be a problem in the future. Sharia transactions are not only carried out by Muslims, but also between Muslims and non-Muslims. The question is whether religious courts have the power to handle Sharia disputes between Muslims and non-Muslims. This problem is also found in the inheritance of different religions, therefore in the interpretation of Article 49 of Law no. 1 and Tafsir 3 March 2006, "Among Muslims, including those who are religious. What does it mean for a person or legal entity that is automatically under the jurisdiction of a religious court and automatically obeys Islamic law? Article 49 In Law Number 7 of 1989 the principle of choice of law is adopted, namely in the field of inheritance, Muslims can consider which law will be used in the distribution of inheritance assets prior to court proceedings. This provision is regulated in Law No.3. No longer valid in March 2006.

Other powers based on Law no. 3. According to the provisions of March 3, 2006, if the subject of the dispute is Muslim, the religious court has the right to investigate and regulate property or other civil disputes related to the object of the dispute in accordance with the provisions of Article 49. This is to avoid delays or delays in dispute resolution efforts. because the



causes of property or other civil disputes are usually raised by parties who are not satisfied with the religious court process. Conversely, if the subject of disputes over property or other civil rights is not the subject of a dispute in a religious court, then the dispute in a religious court will be postponed to await a court decision in an ordinary court. This suspension will only be implemented after the disagreeing party has submitted evidence to the religious court to prove that he has registered the lawsuit with the disputed object at the local court in the religious court. For disputes that raise objections, the religious court does not need to postpone its decision on disputes that are not related to the dispute. Another addition to the authority of the religious court is that the religious court provides information on the Rukat Hilal when determining the beginning of the month of the Hijri year. This is regulated in Law No.1. On March 3, 2006, because the religious court had issued a verdict (Itsbat) for a long time, this decision was addressed to the testimony of people who saw or watched the moon in every month of Ramadan and the beginning of the month of Shawwal. At the request of the Minister of Religion, National resolutions were issued to stipulate 1 (one) Ramadan and 1 (one) Shawwal. Religious courts can also provide information or advice on the difference between determining the direction of the Qibla and determining prayer times.

The development of authority is closely related to the preparation of institutions including judges and clerks. Judges' understanding of Islamic economics is absolutely necessary. With the existence of this law, it is hoped that on March 3, 2006 it can be an inspiration for law enforcement officers in the Religious Courts to further improve the performance and quality of their resources in order to provide the best public services in the field of law. It should be noted that the existence of a religious court has been recognized by the constitution. With the entry of religious courts into the 1945 Constitution, there is no longer any debate about the existence of an integrated Indonesian national justice in the judicial power system.

#### ISLAMIC LAW CHALLENGES IN NATIONAL LAW

Legal development aims at realizing a national legal system that is in line with national interests through preliminary preparation of all legal materials based on Pancasila and UUD 1945 and UUD 1945. This is a wise step in the process of realizing this. National law which is full of ethnic and religious values of the Indonesian nation.

The idea that national laws will change is actually a desire to escape from an undemocratic, fascist and oppressive life. This kind of thinking is a dialectical struggle against forces that are dissatisfied with a colonial legacy legal system that is incompatible with Indonesian social and cultural values. This concept is engraved in the history and values of the nation's struggle, history and these values are contained in the consensus of the "Jakarta Charter" as the culmination point that inspired and inspired the proclamation of independence on 17 August 1945. This shows that Islamic law has been deeply rooted in the soul of the Indonesian nation. In addition to the sociological opportunities mentioned above,<sup>13</sup>First, ethnic diversity. It should be remembered that Indonesia is a large country, and each region has its own socio-cultural conditions, so it is not easy to get close to each other. However, before efforts to incorporate the socio-cultural aspects of each component of the state into the national legal system, an ongoing regional separation process must be carried out.

Second, legal education methods. So far, the law courses taught to students are the rule of third between Western law, Islamic law and customary law. Because Indonesian society is relatively different and covers a wide area, a common ground between these legal elements is sought. Therefore, what is needed now is a comprehensive understanding of legal experts from the three sources of law. Of course, this will require a very hard ideological struggle.

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<sup>13</sup> Said Agil Husin al-Munawar, *Islamic Law and Social Plurality*, Jakarta: Penamadani, 2004, p. 17



Third, there is a lack of academic research in Islamic law. The underdevelopment of Islamic research centers is caused by: (a) Historically, research centers that did not uphold Islamic law previously developed did not provide a place for the study of Islamic law; (b) Islamic legal research lies between religious research and legal research. Therefore, all aspects of research are not in-depth; (c) Muslims believe in low quality phenomena, especially the uncontrolled development of faith and moral beliefs, resulting in a decline in the moral quality of law enforcement; (d) Dutch political legal policies continue to comply with their own political interests, such as: (1) Muslims are not allowed to obey their own laws; (2) Religious courts are not completely independent in family disputes, with the exception of family law; (e) Muslims face many problems, and there is no Fatwa law that can classify them as Islamic Courts. Public. A single law that can be accepted by all parties. This is the problem facing Muslims today when they want to contribute to Islamic law in the process of developing national law.

### CONCLUSION

In this process, Islamic law underwent a considerable development. Islamic law still has many opportunities to enter into Indonesian legislation. At present, there are positive developments in society, the ruling elite and the acceptance of Islamic law and the legislature for the legislature.

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