

# THE DEVELOPMENT OF ISLAMIC LAW IN INDONESIA

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## ABSTRACT

*This article is a bibliographical essay of books and articles about the development of Islamic law in Indonesia. Thus this paper tries to organize some works conducted by both Indonesian and non Indonesian scholars. The article is divided into three parts. The first is introduction and then followed by the discussion about the topic itself. The second part is presented into several divisions according to the approaches of study on the development of Islamic law in Indonesia, such as historical approach and legal approach. The last part is the conclusion.*

**Keywords:** *Islamic law, bibliography, Indonesia*

## Introduction

Recently, there are many regions in Indonesia which propose to apply Islamic law. These phenomena has increased since the promulgation of law no 22/1999 on Otonomi Daerah (Decentralization) which was renewed by law no 32/2004 on Pemerintah Daerah (Region's Government) and Law no. 44/1999 which decrees the specialization of Nangroe Aceh Darussalam province. The Laws, together with Presidential Decree (Keputusan Presiden) no. 11/2003, are the sources of application of Islamic law in Aceh. Some regions follow to enforce Islamic law by promulgating Peraturan Daerah (region's regulation) or Keputusan Bupati/ wali kota (regent's decree). Nowadays, at least there are 21 Peraturan daerah (region's regulation) concerning the application of

Islamic law<sup>1</sup>, such as the obligation of wearing jilbab (head cover) and zakat (religious charity) payment. It seems that the political transition from the authoritarian New Order to a more democratic one has opened the chance for the Indonesian people to rebuild the nation and consolidating upon existing legal systems.<sup>2</sup>

The proponents of the implementation of Islamic law argue that since the majority of Indonesians are Muslims, it is necessary to apply Islamic law in Indonesia. Based on the data from the Board for Statistics Center 2005, about 182 millions of Indonesians are Muslims or more or less 82% of its population<sup>3</sup>. Majelis Mujahidin, one of the proponents of application of Islamic law in the recommendation from the First Congress in Yogyakarta, has recommended the government of each region which the vast majority of residents are Muslim to formally apply Islamic law.<sup>4</sup>

On the other hand, implementations of Islamic law are not as easy as in the theory. The Wahid Institute, in Gatra no 24/XII 29 April 2007, for example, portrays one of many problems which are faced by the implementation of Islamic law in Bulukumba. Even though the obligation to wear jilbab only for Muslim woman, there is a case when a non-Muslim women was forced to wear it in a public meeting<sup>5</sup>. This is small case which is known in the media, it is assumed that there are many other cases related to the discrimination in the implementation of the law.

When one draws back to the history of Islam in Indonesia, it is obvious that discussion about the development of Islamic law in Indonesia has never been out of date. Indonesian history has proven that the development of Islamic law is in accordance with the development of Islam in Indonesia as well as the development of the state itself. Because of this complicated relations between state, Islam and Islamic law, it is not easy to determine what kind of approach is the best method to study Islamic law in Indonesia.

There are many scholars who have conducted research on the development of Islamic law in Indonesia. They use various approach in order to reach a deep analysis on the subject. Some of them use historical approach while

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<sup>1</sup> <http://www.wahidinstitute.org/indonesia/content/view/286/54/> , 3 May 2007, 6:47

<sup>2</sup> Arskal Salim dan Azyumardi Azro (ed), *Shari'ah dan Politics in Modern Indonesia*, ISEAS, Singapore, 2003, p. 213

<sup>3</sup> <http://www.depag.go.id/index.php?menu=page&pageid=17> , 3 May 2007, 7:31

<sup>4</sup> Irfan Suryahadi Awwas, *Seri Publikasi Risalah Kongres Mujahidin I dan Penegakan Syari'at Islam*, Yogyakarta: Wihdah Press, 2001, p. 154

<sup>5</sup> <http://www.wahidinstitute.org/indonesia/images/stories/SUPLEMENGATRA/gatraedisi-vii.pdf> , 3 May 2007, 9:20

some others use legal or even political approach. In advance, there are some researchers who combine two or more approaches.

In this paper, I will present some approaches which have commonly been used in the study of Islamic law in Indonesia. This paper attempts to organize some work done by Indonesian scholars as well as non Indonesians. However, I realize that writing this kind of bibliographical essay is not simple. With all of my limitation such as time and the various discussions done concerning Islamic law in Indonesia and also very vast research on this subject, I am not pretending to have done a very valuable work. Still, I hope this small work will be useful in understanding the development of Islamic law in Indonesia.

This paper mainly is divided into three parts. First of all is, as any other papers, the introduction of the subject. The second part is the body of the paper where I portray some works on Islamic law in Indonesia. This part will contain some sub division in accordance with approaches of study on the development of Islamic law in Indonesia, such as historical approach and legal approach. The last of this paper is a conclusion drawn from the previous discussion.

## **Historical point of view**

Discourse on the application of Islamic law in Indonesia has risen since the independence era. Martin van Bruinessen's article can be used as an introduction on the relations between state and Islam in the history of Indonesia, even though his main concern is in the Islamic political movement rather than sharia in Indonesia. In the article given title "State-Islam relations in Contemporary Indonesia; 1915-1990" he divided the attempt of the formalization of Islamic law during the independence era into two categories.

The first is the attempt of Muslim leaders in Panitia Persiapan Kemerdekaan Indonesia (PPKI) or Committee for the Preparation of Indonesian's Independence. When the founding fathers of Indonesia discussed about the formation of the Indonesian's government, some of the members who were Muslims proposed Islam as the state religion<sup>6</sup>. Muslim leaders stand up for the "sharia constitutional status" by proposing the Jakarta Charter as the preamble to the constitution. However, their effort failed because they faced strong opposition from the secular nationalists.<sup>7</sup> Another group tended to be

<sup>6</sup> Muhammad Atho Modzhar, *Islam and Islamic Law in Indonesia; a socio-historical approach*, Jakarta: Office of Religious Research and Development Training, 2003, p. 38

<sup>7</sup> Martin van Bruinessen, "State-Islam relations in Contemporary Indonesia; 1915-1990" in C. van Dijk and A.H. de Groot (eds.), *State and Islam*, Leiden: Research School CNWS Publication, 1995, p. 97

more radical in their effort on making sharia as the basis of the Indonesian state. This group, latter known as Darul Islam was led by Kartosuwiryo, who came to control the vast part of West Java province and “spoke of themselves as the Islamic State of Indonesia (Negara Islam Indonesia)”<sup>8</sup>. This Islamic state based on sharia and a juridical statement from the ulama. It was absolutely the opposition of the Republic of Indonesia which was based on secular system. This group developed into a full blown rebellion against the Republic and resisted the Siliwangi division returning to West Java in 1949. The rebellion lasted in 1962 when Kartosuwiryo was captured. In South Sulawesi, the same group, which was led by Kahar Muzakkar, lasted longer until the leader was shot in early 1965.<sup>9</sup>

In the case of Darul Islam rebellion in West Java, one can find an article by C. A. O. van Nieuwenhuijze “The Dar ul-Islam Movement in Western Java” is very adequate. The author describes the historical background of Darul Islam in West Java, which had the root from Muslim value. Nieuwenhuijze argues that in general, Muslims share the idea of the ideal Muslim state which “must be superimposed upon and officially recognized by the state, in which event the latter may well be national and democratic though its standards are Muslim.” Not only did the Darul Islam group led by Kartosuwiryo but also Masyumi and PSII share this idea.<sup>10</sup> For the more comprehensive history of Darul Islam in Indonesia, *Rebellion under the Banner of Islam: the Darul Islam in Indonesia* by Cees van Dijk is suggested. This book has proven that the collective violence in Indonesian history have mixed political ideologies of nation or class with ethnic or religious identities.<sup>11</sup>

For the study on the concept of dar al Islam an article by Madjid Khaduri, “Islam and the Modern Law of Nation” gives a valuable introduction. The term dar al Islam was always vis-à-vis with dar al-harb. Dar al Islam means the territories which are under the law of Islam, while dar al harb are those which are abode of war or the territory of the enemy. It is an obligation for all Muslims to reduce the dar al harb “to achieve Islam’s ultimate objectivity”. However, one has to consider that this definition is debatable<sup>12</sup>.

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<sup>8</sup> Ibid, p. 98

<sup>9</sup> Ibid, p. 98

<sup>10</sup> C. A. O. van Nieuwenhuijze “The Dar ul-Islam Movement in Western Java” in *Pacific Affairs*, Vol. 23, No. 2. (Jun., 1950), pp. 171

<sup>11</sup> See Cees van Dijk, *Rebellion under the banner of Islam: the Darul Islam in Indonesia*, The Hague: Martinus Nijhoff, 1981

<sup>12</sup> Majid Khadduri, “Islam and the Modern Law of Nations”, *The American Journal of International Law*, Vol. 50, No. 2. (Apr., 1956), p. 359

The abundant materials on the Dutch colonial policy toward Islam are sufficient to draw back the formalization of Islamic law in Indonesia. For this purpose, Harry J. Benda's work *Christian Snouck Hurgronje and the Foundations of Dutch Islamic Policy in Indonesia* seems to be a honorable work. Snouck Hurgronje was "the man who had inaugurated a new era in Dutch-Indonesian relations."<sup>13</sup> It was him who convinced the Dutch government that the real enemy was not Islam as a religion but Islam as a political doctrine which was inspired by the Islamic rulers abroad such as the Chaliph.<sup>14</sup> His opinion was used by the Dutch government as the basis for the Dutch policy towards Islam.

An Indonesian scholar, Deliar Noer, has proven that the Islamic reform movement in Indonesia during the colonial era was influenced by Islamic reform movement in other countries especially the Middle Eastern countries.<sup>15</sup> In his book *Gerakan modern Islam di Indonesia 1900-1942 (Islamic Modern Movement in Indonesia 1900-1942)*, Noer classified Islamic movement in the Dutch colonial period into two. The first is traditional group who mainly concerned about ibadah or din (religious ritual). This group pretended to follow certain madhhab but in the fact they were the follower of their imam.<sup>16</sup>

The second group is the reform group who argued that Islamic teaching should stick to the contemporary situation. They divided Islamic teaching into two parts, first is religion in a narrow sense that include ibadah (religious practice) such as shalat (prayer) and puasa (fasting). The second category, a wider definition of religion, related to the secular matter such as the relations between people and the state.<sup>17</sup>

In order to grasp the influence of Snouck Hurgronje's ideas toward the Dutch colonial policy, the work by Daniel S. Lev is important. In chapter one of his book under the title *Islamic Courts in Indonesia*, Lev presents the relations between the Dutch colonial policy and the Islamic judiciary in Indonesia. Quoting from Benda, Lev mentions that Snouck Hurgronje "had done more than anyone else to clarify the picture of Indonesian Islam"<sup>18</sup>. Until the late nineteenth century, the Dutch colonial government viewed Islamic

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<sup>13</sup> Harry J. Benda's work," *Christian Snouck Hurgronje and the Foundations of Dutch Islamic Policy in Indonesia*" in *The Journal of Modern History*, Vol. 30, No. 4. (Dec., 1958), p.340

<sup>14</sup> *Ibid*, p.342

<sup>15</sup> Deliar Noer, *Gerakan modern Islam di Indonesia 1900-1942*, Jakarta: LP3ES, 1980, p.316

<sup>16</sup> *Ibid*, p. 316

<sup>17</sup> *Ibid*, pp. 316-330

<sup>18</sup> Daniel S. Lev, *Islamic Courts in Indonesia*, Berkeley, Los Angeles, London: University of California Press, 1972, p. 15

law as the basic law for Indonesian Muslims; it was Snouck Hurgronje who convinced that the fact was otherwise.

Chapter 2 of Ratno Lukito's book *Pergumulan antara Hukum Islam dan Hukum Adat di Indonesia* (Islamic Law and Adat Encounter: The Experience of Indonesia) provides an analysis and the development of Islamic law in Indonesia, especially its relations with the adat (customary law). In this chapter, the author argues that the Dutch colonial government had applied a dualism policy in order to win the customary law and defeat the Islamic law.<sup>19</sup> In the relations between Islamic law and customary law, one should take into consideration the theories about the development of Islamic law in Indonesia.

For this subject, there is a Sajuti Thalib's article "Receptio in Complexu, Theori Recepti and Recepti A Contrario" which presents the Indonesian Muslim scholars who claim that Islamic law has applied in Indonesia and it has influenced in Muslims community.<sup>20</sup> In another work under the title *Receptio A Contrario*, Sajuti Thalib mentions that the first scholar who observes the implementation of Islamic law in Indonesia was Lodewijk Willem Christian van den Berg. He was a Dutch scholar who acknowledged that Islamic law has a strong influence toward Muslims in Southeast Asia especially in the private law such as marriage, divorce and inheritance.<sup>21</sup>

Another adequate material in this subject is a book written by Ahmad Rofiq *Pembaharuan Hukum Islam di Indonesia* (Islamic Law Reform in Indonesia). In short, there are three theories in the implementation of Islamic law in Indonesia. The first is what so called theory *receptio in complexu* which is stated that Islamic law has been applied by Indonesian Muslims since the first time Islam came to Indonesia. This theory was introduced by van den Berg.<sup>22</sup>

The second theory was introduced by Snouck Hurgronje and called as *recepti* theory. It is an opposite of the first theory and proposed an idea that the law which was used by Indonesian Muslims was customary law. If Islamic law was in accordance with customary law, it will be accepted by people; otherwise it will not be applied.<sup>23</sup> Some Muslims scholars strongly opposed

<sup>19</sup> Ratno Lukito, *Pergumulan antara Hukum Islam dan Adat di Indonesia*, Jakarta; INIS, 1998, p. 28

<sup>20</sup> Sajuti Thalib, "Receptio in Complexu, Theori Recepti dan Recepti A Contrario," in Panitia Penerbitan Buku untuk Memperingati Prof. Mr. Dr. Hazairin ed., *Pembaharuan Hukum Islam di Indonesia in Memoriam Prof. Mr. Dr. Hazairin*, Jakarta: University of Indonesia Press, 1976, p.44-45

<sup>21</sup> Sajuti Thalib, *Receptio A Contrario*, Jakarta: Academica, 1980, pp. 5-7

<sup>22</sup> Ahmad Rofiq *Pembaharuan Hukum Islam di Indonesia*, Yogyakarta: Gama Media, 2001, p. 55

<sup>23</sup> *Ibid*, p.62

this theory. One of them is Hazairin who called this theory as “teori iblis (evil theory)”<sup>24</sup>. It was Hazairin who proposed the third theory as a counter theory for the second one. According to Hazairin, the values which were applied in the Muslim community were based on Islamic law. Customary laws were applied if they were in concordance with Islamic values. This is what latter on called as *recepti exit theory* or *receptio a contrario theory*.<sup>25</sup>

There is an article written by Léon Buskens concerning the relationship between shari’a, state law and local custom<sup>26</sup>. Even though it is a study on the Muslim immigrant in Western countries, its method and approach may be useful in the study of the Indonesian case. In this article, the author proposes an ‘Islamic’ triangle since an Islamic idiom is dominance “in all three, as well as in the discourse on legal norm in general”<sup>27</sup>. It is difficult to speak on an Islamic triangle in Indonesian situation since Islamic law is not as dominance as that in the author’s case. It seems that the government idiom is much more dominated. One can easily recognize the “government idioms” in the legal form of Islamic law in Indonesia, such as Marriage Law or Zakat Law.

## **Legalization of Islamic law**

Since those article mentioned above mainly concerns with the relations between state and Islamic law in the history of Indonesia, one will not find a comprehensive history on the formalization of Islamic law in Indonesia. In this subject, a work by Bustanul Arifin *Pelembagaan Hukum Islam di Indonesia: Akar Sejarah dan Prospeknya* (Institutionalization of Islamic Law in Indonesia: History and its Future) can give a basic introduction. This book gives an overview on the implementation of shari’a in Indonesia especially the establishment of the religious court. In page 78, Arifin argues that along with the development of Islamic kingdoms in Indonesia, the religious court was given the authority over the religious matter. This authority was taken over from the *tahkim* that is an informal arbitration institution that had a competency related to religious matter. At the first time, not only did the religious court concern about private laws but also concern with penal laws in certain areas<sup>28</sup>.

Another source that can be consulted in this subject is *Eklektisme Hukum*

<sup>24</sup> Ibid, p.68

<sup>25</sup> Ibid, p. 73

<sup>26</sup> See Léon Buskens, “An Islamic Triangle Changing Relationship between Shari’a, State Law and Local Customs”, *ISIM Newsletter* 5/00, 2000, p.8

<sup>27</sup> Ibid, p.8

<sup>28</sup> Bustanul Arifin, *Pelembagaan Hukum Islam di Indonesia: Akar Sejarah dan Prospeknya*, Jakarta: Gema Insani Press, 1996, p. 78

Nasional: Kompetisi antara Hukum Islam dan Hukum Umum (Eclecticism of the National Law: The Competition between Islamic law and secular law) by Qadri Azizy. This book portrays the encounter between Islamic law and secular law in Indonesia since the era of Islamic kingdom. Azizy explains that during the Dutch colonial period, the religious court lost its competency on the inheritance. The competency on the inheritance then was handed over to the Landraad (state court)<sup>29</sup>. Muhammad Ali's *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia* (Islamic Law: Introduction to Jurisprudence and Islamic Legal Structure in Indonesia) is another book in this genre.

Two books written by Cik Hasan Bisri seem adequate enough to understand the history behind the establishment of Islamic Court in Indonesia. These two book "Peradilan Agama di Indonesia (Religious Court in Indonesia) and Peradilan Islam dalam Tatanan Masyarakat Indonesia (Islamic Court in Indonesian Order) can be used as the supplement for the work of Daniel S. Lev *Islamic Court in Indonesia*. The first book is a major book for the students of Islamic law course; therefore its discussion is very brief. In the second book, the author has confidence on the development of Islamic law in Indonesia through sociological perspective. He argues that the development of Islamic law has been supported by the fact that Muslims are majority in Indonesia.<sup>30</sup>

Another work done by Indonesian scholar in that subject is Jazuni's *Legislasi Hukum Islam di Indonesia* (Legalization of Islamic Law in Indonesia). By analyzing some legal documents related to the implementation of Islamic in Indonesia, the author attempt to reach the Muslims opinions on the subject of legalization of Islamic law. Since the author uses socio-juridical approach, this study draws the fact about tug of war of some political interests.<sup>31</sup> Among the Laws which are studied by Jazuni are Marriage Law, Religious Court Law, Hajj Law and Zakat Law. By the political period perspective, Jazuni comes into a conclusion that, at last, the laws are not only a result of juridical process but at the same time laws are the product of political discourse.<sup>32</sup>

A study on the Islamic legal thought in Indonesia also can be traced from the fatwa released by the Indonesian ulama. An example of this method is Fatwa-

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<sup>29</sup> A. Qadri Azizy, *Eklektisisme Hukum Nasional: Kompetisi antara Hukum Islam dan Hukum Umum*, Yogyakarta: Gama Media, 2002, p. 155

<sup>30</sup> Cik Hasan Bisri, *Peradilan Islam dalam Tatanan Masyarakat Indonesia*, Bandung: Remaja Rosdakarya, 1997, p. 22

<sup>31</sup> Dr. Jazuni, S.H., M.H., *Legalisasi Hukum Islam di Indonesia*, Bandung: PT. Cipta Aditya Bakti, 2005, p. 20

<sup>32</sup> *Ibid*, p. 357



fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia, 1975-1988 (Fatwas of the Council of Indonesian Ulama: A study of Islamic Legal Thought in Indonesia 1975-1988). Using historical-legal approach, Atho Mudzhar tries to describe the dynamic of Islamic legal thought in Indonesia. First of all, he draws back the history of Indonesian ulama since the Islamic kingdom period. He divides the development of Islamic legal thought into three periods: the pre-colonial period, the colonial period and the independent period<sup>33</sup>. These three eras have its own characteristics which show the development of Islamic legal thought in Indonesia. For the deeper study on fatwa and Indonesian Ulama, one can consult Nico Kaptein's *The Voice of the Ulama: fatwas and Religious Authority in Indonesia* and his introduction to the *Islamic Law and Society* 12 Number 1, 2005.<sup>34</sup>

Another work that should be taken into consideration is M.B. Hooker's *Indonesian Islam: Social Change through Contemporary Fatwa*. In this article, Hooker mentions three factors of the complexity of Islam in Indonesia that influence the fatwas in the 20th century. The first is the fact that the "indigenous Islam" Islam in Indonesia is mainly following the Shafi'i madhhab. At that time vast books belong to Shafi'i's school were translated into Indonesian whether a whole book or just small part of it. Secondly, the Dutch colonial policy had been changed in this period. During the 19th century, the Dutch government's knowledge about Islam was quite narrow but finally the Dutch policy was settled vis-à-vis Islam during the 20th century. The last factor is the Indonesian self-confidences as being Muslim despite the fact that they were classified legally as "native" and hence subject to the adat.<sup>35</sup>

In order to grasp a thorough understanding on the legalization of Islamic law in Indonesia, one is supposed to study the material laws such as the Constitution and Bills. In this field, Marzuki Wahid and Rumadi's collaboration on *Fiqh Madzhab Negara: Kritik atas Politik Hukum Islam di Indonesia* (The Fiqh of State Madhhab: Critique on Politics of Islamic Law in Indonesia) should be counted. What the authors call as madzhab negara (state madhhab) is *Kompilasi Hukum Islam* or KHI (Compilation of Islamic Law). According to the author, KHI was drafted by a team which was selected by the government. The members of the team mostly are scholars from some Institute of Islamic

<sup>33</sup> Mohammad Atho Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia : Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia, 1975-1988*, Jakarta: INIS, 1993, p. 28

<sup>34</sup> All of the articles in *Islamic Law and Society* 12, Number 1, 2005 discuss about the Ulama in Indonesia. Among the contributor for this edition is Michael Laffan who wrote an article "The Fatwa Debated: Shura in One Indonesian Context" in page 93-121.

<sup>35</sup> M.B. Hooker, *Indonesian Islam: Social Change through Contemporary Fatwa*, Australia, Honolulu: Allen & Unwin and University of Hawai'i Press, 2003, p. 12

Studies in Indonesia.<sup>36</sup> Therefore, the result of the compilation represents the state opinion. Using socio-political approach, the authors try to show some consequences of the legalization of Islamic law in the past and present.<sup>37</sup>

Understanding the process of legalization of Islamic Law in Indonesia is a significant study in an attempt to portray the background of a certain Law. For this observation one can resemble what had been done by Leon Buskens in Morocco. In his article *Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere*, he addresses some issues such as the distinction between the codified and the proposed norm and on the authoritative institution who would determine whether some people can get involved in the discussion or not<sup>38</sup>. This kind of approach will be useful to understand the background of the enactment of Islamic law in Indonesia. While in Morocco, it is the king who has the authority<sup>39</sup>, in Indonesia the circumstances is different. Indonesia is not a monarchy, therefore there is no an authoritative figure. However, it can be said that the government is the Indonesian authority.

Finally, it is necessary to reach the recent issues related to the dynamics of Islamic law in Indonesia. Nowadays, some regions propose to formally apply Islamic law. They argue that it is an obligation for Muslims to implement Islamic law in their daily life. However, there some question which are come up from this issue, for example, what they mean by Islamic law, who should be the authority to determine which law should by apply and so forth. One work that can be used as a starting point in this issue is *Formalisasi Syariat Islam di Indonesia: Sebuah Pergulatan yang Tak Pernah Tuntas (Formalization of Islamic Law in Indonesia: a Never Ending Debate)* by Masykuri Abdillah et al.

## **The Relations between the State and Islam in Indonesia**

Studying the political interests of legal documents, one can not set aside the relationship between state and religion. In the case of Indonesia the relations between state and Islam is quite different from that of other Muslim

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<sup>36</sup> Marzuki Wahid and Rumadi, *Fiqh Madzhab Negara: Kritik atas Politik Hukum Islam di Indonesia*, Yogyakarta: LKiS, 2001, p. ix

<sup>37</sup> *Ibid*, p.xii

<sup>38</sup> Léon Buskens, “Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere”, *Islamic Law and Society* 10, 1, 2003, p.71

<sup>39</sup> It is obvious that the king is the authoritative person in the debate of Islamic family law in Morocco since all sides who get involved in the debate “appeal the king as Commander of the Faithful”. See Léon Buskens, *Ibid*, p.124

countries such as Egypt, Sudan, Morocco, Pakistan, Algeria or the closest neighbor Malaysia. In these countries, even though Islam is given a high position as the religion of the country in fact the relation between them “has been characterized by severe tension, if not hostiles”. On the other hand, Islam in Indonesia since the independence era has been seen as the opponent of the state ideology Pancasila.<sup>40</sup>

Thanks to Bahtiar Effendy who had done a deep research on the relations between state and Islam in Indonesia. Quoting from Nazih Ayubi, Effendy has shown how complicate is the relation between state and religion in Islamic political thinking. According to Ayubi, Muslims “believe in the complete and holistic nature of revealed Islam so that, according to them, it encompasses the three famous ‘Ds’ (din, religion; dunya, life; and dawla, State). ... [Thus] Islam is an integrated totality that offers a solution to all problems of life. It has to be accepted in its entirety, and to be applied to the family, to the economy and to politics. [For this group of Muslims] the realization of an Islamic society is predicated on the establishment of an Islamic State, that is, an ‘ideological State’ based on the comprehensive precepts of Islam”.<sup>41</sup>

In the fourth chapter, of his book under the title Islam and the State in Indonesia, Effendy explains “the implications of the new intellectualism on the current expression of Indonesia’s Islamic political thoughts and action”<sup>42</sup>. He divided this matter into three major themes, they are; reformulation of the theological or philosophical underpinning of political Islam, redefinition of the political objectives of Islam and reassessment of the political approach of Islam.<sup>43</sup>

Another work that deals with the same subject is Islam in an Era of Nation-State: Politics and Religious Renewal in Muslim Southeast Asia, edited by Robert W. Hefner and Patricia Horvatich. Discussing three Southeast Asian countries, they are Indonesia, Malaysia and Philippines; Hefner concludes that there are several generalizable messages on Islam in an era of nation-states, especially in Southeast Asia. The most basically message is that “the nation-state and nationalism have been as decisive an influence on Muslim politics as have any timeless principles of Muslim governance.”<sup>44</sup>

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<sup>40</sup> Bahtiar Effendy, *Islam and the State in Indonesia*, Singapore; Institute of Southeast Studies, 2003, p. 1

<sup>41</sup> *Ibid*, p.4, quoted from Nazih Ayubi, *Political Islam: Religion and Politics in the Arab World*, London, New York: Routledge, 1991, p.63-63

<sup>42</sup> *Ibid*, p.102

<sup>43</sup> *Ibid*,

<sup>44</sup> Robert W. Hefner and Patricia Horvatich (eds.), *Islam in an Era of Nation-State: Politics*

Zachary Abuza's *Political Islam and Violence in Indonesia* is another work in the subject of the relationship between Islam and the state in Indonesia. However, he has another approach on this matter. Instead of looking at the general idea about Islamic politics which is shared by Muslims in Indonesia, he concentrates in the idea shared by some Muslim groups. Finally, although he acknowledges Indonesian Islam as "tolerance, moderation and pluralism helped in creating the foundations of democracy"<sup>45</sup>, Abuza warns that the growth of Islamists in Indonesia may cause the rise of political violence in Indonesia. He argues that the relations between "the rise of Islam as social and political force; the collapse of a centralized, authoritarian system of government; and the emergence of a marked upsurge in political violence and then terrorism; much of it perpetrated in the name of Islam"<sup>46</sup>.

The similar warning is given by Greg Barton in his article "The Prospects for Islam" where he argues that although "the majority of santri Muslim in Indonesia are committed to a tolerant and moderate understanding of their faith, people should be anxious about the potential for radical Islamism to negatively influence political developments or for communal violence to break out on a broader scale across the troubled archipelago. This is important in order to acknowledge the dangers latent in what is presently a minority movement representing a very outspoken and radicalised section of society."<sup>47</sup>

## **Indonesians Muslim Scholars**

Studying the development of Islamic law in Indonesia will be incomplete without studying the actors behind it. What do I mean by actors are Indonesian Muslim scholars who get involved in the Islamic law discourse in Indonesia. It is necessary to understand their ideas and their role in society in order to recognize the important of their ideas. In this subject, one can start with what was done by Humphreys. In chapter eight of his book *Islamic History a Framework for Inquiry*, Humphreys discusses about the role and status of ulama in Islamic society. In this chapter, in spite of the ambiguity on who ulama are, he describes ulama as "the one group which in fact makes it

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and Religious Renewal in Muslim Southeast Asia, Honolulu: University of Hawai'i Press, 1997, p. 26

<sup>45</sup> Zachary Abuza, *Political Islam and Violence in Indonesia*, London and New York: Routledge, 2007, p.1

<sup>46</sup> *Ibid*, p. 2

<sup>47</sup> Greg Barton, "The Prospects for Islam", In *Indonesia Today: Challenges of History*, Grayson J. Lloyd and Shannon L. Smith (eds.), Singapore: Institute of Southeast Asian Studies, 2001, p.253

[Islamic society] ‘Islamic’ rather than something else”<sup>48</sup>.

If one considers the definition of ulama mentioned above therefore Muslim scholars who get involved in the development of Islamic law in Indonesia can be classified as Indonesian ulamas. Muslim scholars tend to present their ideas concerning the development of Islamic law in Indonesia in order to “Islamized Indonesians”. A dissertation by Masykuri Abdillah *Responses of Indonesian Muslim Intellectuals to the Concept of Democracy (1966-1993)* is one of researches that draw the ideas of Indonesia Muslims scholars. In this work, Abdillah compares responses of nine Muslim scholars related to their ideas of democracy. Some issues such as human rights, equality, liberty, pluralism and Pancasila (the Five Principles) are taken into account. Before discussing about the contemporary scholars’ idea about democracy, in the first part of his work Abdillah draw back to the history of Indonesia, especially during the independence era, more specific on the discussion about the basis of the state in BPUPKI. Based on his research, Abdillah concludes that most of the scholars accept the term “democracy” and support it to be implemented in Muslim society.<sup>49</sup>

Even though the discussion about democracy has close connections with the discussion about the implementation of Islamic law, one would not find it in Abdillah’s work since he does not go beyond the idea of democracy. For this kind of research, a master thesis written by JM Muslimin under the title *The Reactualization of Islamic Law: A Study of Trends and Methods of Islamic Legal Reform in Indonesia (1945-1995)* and a work done by Mahsun Fuad given a title *Hukum Islam Indonesia: Dari Nalar Partisipatoris hingga Emansipatoris (Indonesian Islamic Law: from Participatory to Emancipated)* will be adequate.

These two works have a different approach in their study. JM Muslimin’s work is a comparison of the ideas of the proponents of the reactualization of Islamic law in Indonesia. In his research, Muslimin portrays the ideas of four Muslim scholars; Hasby as Shiddieqy, Hazairin, Munawir Sjadzali and Ibrahim Hosen. This method is in line with the work of R. Michael Feener *Indonesian Movement for the Creation of ‘National Madhhab’*. Feener writes about two Indonesian Muslim scholars who are considered as “wrote most extensively on the subject”<sup>50</sup>. The main argument which is presented by Feener is that

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<sup>48</sup> R. Stephen Humphreys, *Islamic History: A Framework for Inquiry*, London, New York: I.B. Tauris & co. ltd, 1991, p. 187

<sup>49</sup> Masykuri Abdillah, *Responses of Indonesian Muslim Intellectuals to the Concept of Democracy (1966-1993)*, Hamburg: Abera Verl, 1997, p.251

<sup>50</sup> R. Michael Feener, “Indonesian Movement for the Creation of ‘National Madhhab’”, in

“development in both the colonial discourse of adat and Islamist reactions against it combined in rather unexpected ways to contribute to movements for the creation of a new “national madhhab” or (Ind. Madzab nasional, madzhab Indonesia) in the early Indonesian Republic”.

On the other hand, Fuad’s work is a comparative study of two different positions about this subject. He compares the idea from two different groups which have a different perspective related to the idea of Islamic law in Indonesia. The first perspective which he called as “simpatis-partisipatoris”<sup>51</sup> is supported by Hasbi ash-Shiddieqy, Hazairin and Munawir Sjadzali. This first group is the supporter for the idea that Islamic law should function as the instrument of social engineering. This position inclines toward the establishment of what so called as “Fiqh Madzhab Negara”<sup>52</sup>.

The second group shared the perspective of “kritik-emansipatoris” which views Islamic law as the media of social criticism. This idea mostly is supported by NGO’s activists who are relatively independent. In this research, Masdar F. Mas’udi and Sahal Mahfudh together with Ali Yafie are in this position. They contend that Islamic law should support social transformation toward a democratic and egalitarian society.<sup>53</sup>

Those works are small evidence that there are changes in the development of Islamic law in Indonesia. Hazairin, for instance, proposed the idea of hukum waris bilateral (bilateral inheritance) which is a joint venture between Islamic law and customary law<sup>54</sup>. This new idea is an example of changes within Islamic law in Indonesia. It approves that Islamic law is not “immutable and hence not adaptable to social changes” rather it is “adaptable to social change”<sup>55</sup>.

Another approach in studying the role of Muslims scholars in the development of Islamic law in Indonesia was done by John R. Bowen in the article Legal Reasoning and Public Discourse in Indonesia. Bowen tries to analyze the attempt of Muslims who “try to create authoritative forms of public discourse that validate their own activities in Islamic terms”. In this case, Muslims scholars use printed media such as journals, handbooks and edited

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Islamic Law and Society 9,1, 2001, p.84

<sup>51</sup> Mahsun Fuad, *Hukum Islam Indonesia: dari Nalar Partisipatoris hingga Emansipatoris*, Yogyakarta: LKiS, 2005, p. vi

<sup>52</sup> *Ibid*, p.vii

<sup>53</sup> *Ibid*, p.vii

<sup>54</sup> *Ibid*, pp.82-83

<sup>55</sup> Muhammad Khalid Masud, *Shātibī’s Philosophy of Islamic Law*, Islamabad: Islamic Research Institute, 1995, p.1

collection of scholarly articles as the tools to promote the legal interpretation and change. While the legal changes have brought a new ecology of Islamic law where “Islamic legal norms are subsumed within the framework of civil law judgments, legislative statutes, and the presidential directives”, the printed debates among Muslims have represented the bottom up process of the changes<sup>56</sup>.

For the wider study about Indonesian Muslim scholars, one can refer to Yudi Latif’s *Inteligensia Muslim dan Kuasa: Genealogi Inteligensia Muslim Indonesia Abad ke-20* (The Muslim Intelligentsia of Indonesia: A Genealogy of its Emergence in the 20th Century). It is a fundamental-sociological study and also a scholarly history of Indonesian Muslims. This kind of research has never been conducted on this field before, if any it is few. In this book the author argues that the intellectuals in Indonesia remain as the elite in the political stage since they actually inherit the priyayi (Javanese elite) point of view in the sense that they continue to be inclusive on the top of the society.<sup>57</sup>

## Conclusion

Studying the development of Islamic law in Indonesia is not a simple matter. There are many aspects that often come up and related to each other. As a consequence there are many approaches that are used by scholars in order to grasp this subject, for instance historical approach, legal formal and individual point of view. Some of the scholars use only one approach while some others try to combine two or more point of view. In short, it seems impossible to find a comprehensive work on the development of Islamic law in Indonesia.

At last, this bibliographical essay has attempted to draw the variety of approaches that are used by scholars. This small work is expected to give an overview for the study on the development of Islamic law in Indonesia. Last but not least the more comprehensive bibliographical essay will be adequate for the scholars who have a strong interest in this field of study.

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<sup>56</sup> Muhammad Khalid Masud, *Shātibī’s Philosophy of Islamic Law*, Islamabad: Islamic Research Institute, 1995, p.1

<sup>57</sup> Yudi Latif, *Inteligensia Muslim dan Kuasa: Genealogi Inteligensia Muslim Indonesia Abad ke-20*, Bandung: Mizan, 2005, p. 651

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