

# Islam and the State in Indonesia from a Legal Perspective

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## Colonial Roots of the Relationship between Islam and the Nation-State

The population of the Sunda Islands is traditionally extremely heterogeneous, both in terms of ethnicity and religion. In addition to indigenous Malay religious traditions, Hinduism and Buddhism, Christians and Muslims have also lived on the islands since the 15<sup>th</sup> century and many ethnic groups therefore practice syncretic beliefs. Today, Indonesia is the country with the largest Muslim population in the world with around 200 million Muslims.

In political terms, the various independence movements against Dutch colonial rule revealed two dominant camps: supporters of an Islamic state and advocates of nationalist ideas, for which the religious orientation of the future state played a subordinate role or for which a religiously neutral state based on a Western model was envisioned.

In the Dutch colonial era (1800–1942), the government declared itself neutral and did not interfere with religious affairs but prohibited religious organisations from engaging in political activity (Government Regulation Number 119 Year 1854).<sup>1</sup> The Dutch government policy was influenced by Snouck Hurgronje, a government advisor, who proposed modernisation, secularisation, and Westernisation. From his point of view, a modern Indonesian society could not have been realised either on the basis of Islam or local traditions, but had to follow the model of European history. Therefore, the role of religion was to be limited by local institutions along with a pro-

Islamist vs. nationalist  
independence move-  
ments

<sup>1</sup> Tedi Kholiludin, *Kuasa Negara Atas Agama* (Politik Pengakuan, Diskursus “Agama Resmi”, dan Diskriminasi Hak Sipil) (Jakarta: RaSAIL Media Group, 2009), 141–42.

cess of modernisation through Western education.<sup>2</sup> Thus, the Dutch colonial government established the *Office of Indigenous Affairs* (*Het Kantoor voor Inlandsche zaken*), an early incarnation of the *Ministry of Religious Affairs*, to supervise the marriage, education, and political activity of Muslims.<sup>3</sup> This kind of supervision of religion continued during the Japanese occupation (1942–1945) with the establishment of the *Office of Religious Affairs* (*shumubu*).<sup>4</sup>

### Islam and Politics during the Formation of the Indonesian Nation-State

Islamist and nationalist groups articulated their different views even during the Dutch colonial period through articles written in the media.<sup>5</sup> These debates continued within the *Preparation Council of Indonesian Independence* (BPUPKI) in 1945. On the one hand, the Islamist camp proposed Islam as the basis of the state as well as the official religion of the state, arguing that the state should be obliged to implement Sharia law, and that the president should be Muslim. On the other hand, the nationalist group promoted the principles and ideals of national unity, kinship, democracy, just and civilised humanity, and the Divine, not a particular religion, as the future national principles of Indonesia.<sup>6</sup> On 1 June 1945, Sukarno, the leader of the nationalist camp and later the first president of Indonesia, proclaimed five principles as the foundation for the new nation-state in his speech “The Birth of Pancasila”: (1) nationality of Indonesia, (2) internationalism or humanity, (3) consensus or democracy, (4) social welfare, and (5) Divinity.<sup>7</sup> These principles, Sukarno argued, were rooted in the philosophical traditions of the Indonesian archipelago,

1945: Discussions on the Pancasila as founding principle

2 Dietrich Jung, “‘Islam as a Problem’: Dutch Religious Politics in the East Indies,” *Review of Religious Research* 51, no. 3 (2010): 293–94.

3 Robert W. Hefner, “Public Islam and the Problem of Democratization,” in “Religion and Globalization at the Turn of the Millennium,” ed. José Casanova, special issue, *Sociology of Religion* 62, no. 4 (2001): 501.

4 Harry J. Benda, *Bulan Sabit dan Matahari Terbit* (The Crescent and the Rising Sun, Indonesian Islam under the Japanese Occupation, 1942–1945) (Jakarta: Pustaka Jaya, 1980), 152, 273.

5 Budiyono, “Hubungan Negara dan Agama Dalam Negara Pancasila,” *Fiat Justitia* 8, no. 3 (2014): 419.

6 Ahmad Syafii Maarif, *Studi tentang Percaturan dalam Konstituante: Islam dan Masalah Keagamaan* (Jakarta: LP3ES, 1985), 103.

7 RM. A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009), 300.

thus integrating indigenous, Hindu, Christian, and Islamic traditions. This was the first time the word “Pancasila” (Javanese *pañca* (five) and *sīla* (principles)) was used. This term refers to Indonesia’s five national principles. The phrasing of said principles varies in different documents.

Only three weeks later, a compromise between the two groups was reached through the *Committee of Nine* (which included Sukarno) who formulated the ‘Jakarta Charter’ as the Preamble to the Indonesian Constitution.<sup>8</sup> In this document, the divinity principle now read “Belief in God, with the obligation to implement the Sharia of Islam for its adherents” and was placed in the first position of Pancasila.<sup>9</sup> With this first principle, Indonesia would have become an Islamic nation-state with the obligation to ensure that Sharia law was implemented for Muslims.

However, on 18 August 1945, the day after the declaration of Indonesia’s independence, the *Committee for the Preparation of Indonesian Independence* (PPKI) promulgated the Constitution with some changes from the formulation in the Jakarta Charter. The new formulation removed the phrase “... with the obligation to implement the Sharia of Islam for its adherents” and expanded the first part of the first principle to “Belief in One Almighty God”. This second formulation of the first principle of Pancasila is still in use today. The 1945 Constitution does not mention the word “Islam” at all, and the reference to “Belief in One Almighty God” is said to be a recognition of the religious character of the Indonesian nation, based on the religions that have been embraced by the people.

“Jakarta Charter”:  
Religious freedom with  
implementation of  
Islamic law for Muslims

Declaration of Inde-  
pendence: “Belief in  
One Almighty God” first  
principle of Pancasila

## Religion and Politics in Post-colonial Indonesia

The socio-political conditions of Indonesia under President Sukarno from Indonesia’s independence until 1966 (termed the “Old Order” by his successor Suharto) still involved the same divide between Islamist and nationalist groups. The Islamist camp was affiliated with Islamic parties, especially the *Council of Indonesian Muslim Associations Masyumi* and the traditionalist Sunni Islam movement, the NU (after it broke away from *Masyumi* in 1952). The nationalist camp

8 Kaelan, *Negara Kebangsaan Pancasila: Kultural, Historis, Filosofis, Yuridis, dan Aktualisasinya* (Yogyakarta: Paradigma, 2013), 166.

9 See Kusuma, *Lahirnya Undang-Undang Dasar 1945*, 472.

Islamist and nationalist groups balanced during Sukarno's rule

was affiliated with the nationalist parties and socialism, especially with the *Indonesian Nationalist Party* (PNI) and the *Indonesian Communist Party* (PKI).<sup>10</sup> In the national elections in 1955 under the Interim Constitution of 1950, votes were relatively balanced between Islamist and nationalist groups. The nationalist group gained 253 seats (52.8% of the votes) and the Islamic group won 226 seats (47.2% of the votes).<sup>11</sup>

Nevertheless, the debate surrounding the state's founding principles as well as regarding relations between the state and religion arose again in the *Constitutional Assembly* which was charged with forming a new constitution. As the *Constitutional Assembly* was once again unable to agree on the question of the religious foundation of the Indonesian state, it was ultimately dissolved by President Sukarno with the Decree of July 5, 1959 and he re-enacted the 1945 Constitution.

1960s: Decline of Islamist and Communist groups' political power

On 17 August 1960, President Sukarno issued Decree No. 200 of 1960, which dissolved *Masyumi* because of its involvement in the *PRRI Permesta Rebellion*.<sup>12</sup> This moment was the beginning of the decline of the Islamist camp's political power. Within the nationalist camp, in 1965 a conflict arose between the military and the *Indonesian Communist Party* (PKI). On 1 October 1965, six Indonesian army generals were assassinated in a failed coup d'état by the so-called *Thirtieth of September Movement* (G30S).<sup>13</sup> In the following weeks, the army as well as religious groups accused the PKI of being responsible for and involved in the coup d'état. General Suharto conducted a campaign to purge Indonesian society of the PKI. Around half a million of members and sympathisers of the PKI were killed

10 Daniel S. Lev, *Peradilan Agama Islam di Indonesia* (Islamic Courts in Indonesia) (Jakarta: Intermasa, 1980), 303.

11 Miriam Budiardjo, *Partisipasi dan Partai Politik: Sebuah Bunga Rampai* (Jakarta: Yayasan Obor Indonesia, 1998), 234–56.

12 Amry Vandenbosch, "Nationalism and Religion in Indonesia," *Far Eastern Survey* 21, no. 18 (1952): 183. The PRRI rebellion and the Permesta rebellion occurred in 1957 in the east (Permesta) and west (PRRI) of Indonesia. Both rebellions were directed against the central government's policy towards ethnic groups and the suppression of their regional autonomy. In February 1958, both rebellions unified. The central government's troops beat the revolutionary troops in June 1958. However, Permesta guerrilla fighters remained active until an amnesty in 1961.

13 Hefner, "Public Islam and the Problem of Democratization," 502.

by the army, countless were arrested.<sup>14</sup> This moment marked the end of the political power of communism in Indonesia and the start of efforts to ban the spread of communism (and atheism) as a movement as well as an ideology.<sup>15</sup>

Following the suppression of the coup d'état and the military massacres of (supposed) communists, General Suharto led the traditionally conservative armed forces in a successful coup against President Sukarno. Suharto acted as head of government from 1966 and officially became president in 1968. To underline the rejection of Sukarno's left-nationalist policies, Suharto proclaimed the beginning of a "New Order". This New Order effected mass de-politicisation, socio-political stabilisation, state corporatism, and ideological hegemony.<sup>16</sup> The Islamists initially hoped for a better political position in the New Order era but were instead suppressed and marginalised because of their involvement in the 1960s' *PRRI Permesta Rebellion*.<sup>17</sup> The New Order maintained a policy of removing ideology from political parties and establishing Pancasila as the sole ideology that all political parties should adopt. Political parties were simplified into only three, namely the *Golkar*<sup>18</sup>, the *United Development Party* (PPP) and the *Indonesian Democratic Party* (PDI).<sup>19</sup> This policy is a tangible form of political secularisation since the state forced the political parties to remove religious symbols and arguments from their platforms and banners. This political change was paralleled by changes in Muslim communities that no longer perceived religion as the sole determining factor when making political choices. Their political choice in general elections was now more influenced by the state hegemony than religious identification. Both NU, which ran for election, and

1966/68: "New Order" under Suharto enforced secularisation

14 To this day, there is public and scholarly debate regarding who was responsible for the coup and whether it was supported by foreign secret services.

15 See Olle Törnquist, "Muslim Politics and Democracy: The Case of Indonesia," *Journal of Indonesian Islam* 1, no. 1 (2007): 8.

16 Marzuki Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam dan Counter Legal Draft Kompilasi Hukum Islam dalam Bingkai Politik Hukum Indonesia* (Cirebon: Institut Studi Islam Fahmina, 2014), 149.

17 R. William Liddle, "The Islamic Turn in Indonesia: A Political Explanation," *The Journal of Asian Studies* 55, no. 3 (1996): 621.

18 Utrecht, "Religion and Social Protest in Indonesia," 405; Liddle, "The Islamic Turn in Indonesia," 627.

19 Daniel Dhakidae, "Pemilihan Umum di Indonesia: Saksi Pasang Naik dan Surut Partai Politik," *Prisma* 9 (1981): 34.

*Muhammadiyah*, which politically identified as part of *Masyumi* in 1955's general election, stated that their organisation did not participate in practical politics in the New Order era.<sup>20</sup> Members of the NU and *Muhammadiyah* were free to make their political choice without being directed to affiliate with certain political parties.

### Islamic Reform Movements

Muslim majority supported a civil-democratic Islam

Under pressure from the New Order, Muslim society diverged from the positions of the established Islamist groups, and a reform movement that supported civil-democratic Islam arose. This movement explicitly distanced itself from existing political parties and Islamist groups, even calling the idea of an Islamic state a myth.<sup>21</sup> This reform movement and the strengthening of Indonesian civil society in general were primarily influenced by young Muslim scholars, including Nurcholish Madjid and Abdurrahman Wahid.<sup>22</sup>

Nurcholish Madjid used the idea of secularisation in the sense of de-sacralisation of everything different from the truly Divine. For him, secularisation does not mean the removal of religious orientation from the norms and values of (Indonesian) society, but a radical devaluation of matters which are considered part of the religious domain.<sup>23</sup> The state is secular in the sense that it develops dynamically with reference to religious and ethical values, but is not legitimised by the divine truth. Consequently, Muslims should explore the ethical values of Islamic teachings for and within the state, but should not identify the state with religion because this would lead to the state's sacralisation.<sup>24</sup>

Abdurrahman Wahid, a member of the NU, stated that Islam as a way of life (Sharia) does not have a clear concept of the state.<sup>25</sup> In his interpretation, Islamic teachings consist mainly of basic values

20 Robin Bush, *Nahdlatul Ulama and the Struggle for Power within Islam and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2009), 2, 67.

21 Hefner, "Public Islam and the Problem of Democratization," 503–04.

22 Greg Barton, "Indonesia: Legitimacy, Secular Democracy, and Islam," *Politics & Policy* 38, no. 3 (2010): 471, 473.

23 Nurcholish Madjid, "Keharusan Pembaruan Pemikiran Islam dan Masalah Integrasi Umat," in *Islam Kemandirian dan Keindonesiaan*, ed. Nurcholish Madjid (Bandung: Mizan, 1993), 208.

24 Azyumardi Azra, *Islam Substantif* (Bandung: Mizan, 2000), 313.

25 Abdurrahman Wahid, *Islam Islam Anda Islam Kita: Agama Masyarakat Negara Demokrasi* (Jakarta: The Wahid Institute, 2006), 81–84.

that underlie people's lives – justice, equality and democracy – and an operational framework, such as the notion that “the actions of the people's leaders are determined by the welfare and prosperity of the people” (*tasharruf al-imam 'ala ra'iyatihi manuth bi al-mashlahah*). Islam accommodates social practices as long as these are to the benefit of the people.<sup>26</sup> Consequently, according to Wahid, leadership that is not oriented towards justice and welfare is at odds with the Islamic view. According to Wahid, Pancasila and religion have to be positioned functionally and clearly within their mutual relationship. Pancasila should be understood as the rule of the game that should connect all religions and beliefs in Indonesia. It has to treat all religions and beliefs equally in law and society.<sup>27</sup>

The socio-political changes within the Muslim community were not only the result of the state's social and political policies but also influenced by modernisation and urbanisation in the New Order era. Modernisation tends to increase the purification process in the sense of distinction between religious and non-religious areas and the abandonment of syncretic practices.<sup>28</sup> The process of education and urbanisation also resulted in the emergence of autonomous political and religious orientations that did not necessarily refer to established denominations.<sup>29</sup>

Muslim reform movement influenced both by secularisation policy and modernisation and urbanisation

### From Islamic vs. Nationalist to Islamic and Nationalist: the *Era Reformasi*

In 1998, after long-lasting student protests and against the backdrop of Indonesia's desolate economic situation following the 1997 Asian financial crisis, Suharto had to resign. The New Order era was followed by a phase of democratic reforms, the so-called Reformation Era (*Era Reformasi*). The strict divide between the nationalist and Islamist camps no longer applied. Based on the principles and character of each political party in the Reformation Era, the political landscape can be classified into three main positions: nationalist

*Era Reformasi: Divide between Islamist and nationalist camps fell*

26 Abdurrahman Wahid, “Pribumisasi Islam,” in *Islam Nusantara: dari Ushul Fiqh Hingga Konsep Historis*, ed. Akhmad Sahal and Munawir Azis (Bandung: Mizan, 2016), 44.

27 Wahid, *Islam Islam Anda Islam Kita*, 96–99.

28 Tamney, “Modernization and Religious Purification: Islam in Indonesia,” 207.

29 Joseph Tamney, “Established Religiosity in Modern Society: Islam in Indonesia,” *Sociological Analysis* 40, no. 2 (1979): 126.

parties, nationalist parties rooted in the Muslim community, and Islamic parties.<sup>30</sup>

The nationalist parties are much stronger than the Islamic parties and the nationalist parties rooted in Muslim organisations. In the 1999 election, nationalist parties won a combined 285 seats in the Indonesian Parliament, nationalist parties rooted in Muslim organisations won 85 seats, and Islamic parties won 83 seats. In the 2014 election, nationalist parties won 385 seats, nationalist parties rooted in Muslim communities won 96 seats, and the Islamic parties won 79 seats. In the 2014 election, nationalist parties won 385 seats, nationalist parties rooted in Muslim communities won 96 seats, and the Islamic parties won 79 seats.

When it came to the formation of coalitions backing the candidates for President and Vice President, the distinction between nationalist parties, nationalist parties rooted in Muslim organisations, and Islamic parties did not apply. Coalitions were formed across party groups with the main competition being between the candidates from the nationalist parties.

In the Reformation Era, the meaning of Pancasila, and especially the first principle of the “Belief in One Almighty God” has again been the subject of debate, resulting in debate on the relationship between state and religion. In 2002, the debate regarding the amendment of article 29 paragraph (1) and paragraph (2) of the 1945 Constitution without any fundamental change to Pancasila reflects a shift in the direction of Islamic politics away from efforts to make Islam the state’s foundation towards efforts to implement Islamic law in the Constitution. The proposals were rejected by both houses of the Indonesian Parliament (MPR).<sup>31</sup>

Islamic politics seeking  
for positivisation of  
Islamic Law

30 Anies R. Baswedan, “Political Islam in Indonesia: Present and Future Trajectory,” *Asian Survey* 44, no. 5 (2004). See Sunny Tanuwidjaja, “Political Islam and Islamic Parties in Indonesia: Critically Assessing the Evidence of Islam’s Political Decline,” *Contemporary Southeast Asia* 32, no. 1 (2010): 42.

31 Nadirsyah Hosen, “Religion and the Indonesian Constitution: A Recent Debate,” *Journal of Southeast Asian Studies* 36, no. 3 (2005): 420. See also R. E. Elson, “Two Failed Attempts to Islamize the Indonesian Constitution,” *Sojourn: Journal of Social Issues in Southeast Asia* 28, no. 3 (2013).

## Conclusion

The relationship between Islam and the state has altered with regime changes in Indonesia. During the Old Order period, especially during the period of guided democracy, there was a separation between state and religion and state authorities even opposed Islamists.<sup>32</sup> During the New Order period, religion was confined to the private realm and efforts were made to eliminate political religious movements and remove religious values and symbols from political life. During the Reformation Era, all groups have had the same space to grow and develop. But religious parties, including Islamic ones, have not gained a significant number of votes. This shows that there has been a major shift in the socio-political configuration of Indonesian society, namely, that political choice no longer relates to personal religiosity.<sup>33</sup>

At various points from the Old Order until the Reformation Era, several state laws related to Islamic law have been enacted. Examples include the Marriage Registration Law,<sup>34</sup> the Marriage Law,<sup>35</sup> the Compilation of Islamic Law (KHI),<sup>36</sup> the Zakat Management Law,<sup>37</sup> the Hajj Law,<sup>38</sup> the Waqf Law,<sup>39</sup> the Sharia Banking Law,<sup>40</sup> and State Sharia Securities Law (SBSN).<sup>41</sup> These laws have three objectives: (1) unifying the laws that apply to Muslims; (2) maximising the economic potential of Muslims, and (3) protecting and facilitating religious life within public life. Since these objectives are defined by the state as a secular institution, they have to be understood as secular themselves.

The three periods of Indonesia's history show that, at least in this case, democratic political regimes seem to be more responsive to Islamic law than authoritarian regimes. The authoritarian regimes

Political choice does not relate to personal religiosity

32 Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucration in India and Indonesia," *Comparative Studies in Society and History* 56, no. 2 (2014): 451.

33 Robin Bush, "Regional 'Sharia' Regulations in Indonesia," 178.

34 Law No. 22 of 1946.

35 Law No. 1 of 1974.

36 Presidential Instruction No. 1 of 1991.

37 Law No. 23 of 2011.

38 Law No. 13 of 2008.

39 Law No. 41 of 2004.

40 Law No. 21 of 2008.

41 Law No. 19 of 2008.

Democratic regime  
more responsive to  
religion than  
authoritarian ones

of the Old Order and the New Order made clear delineations between state and religious affairs. In the democratic Reformation Era, the boundary is more dynamic, and influenced by different political forces. As a consequence, one may argue that the state agenda of secularisation can be applied more readily to the authoritarian periods than to the democratic Reformation Era, which is not only more open to religion but has even created a space of religious revivalism.

Islamic law is generally incorporated into state law in periods where there are good political relations between Islamic groups and the state. This is generally the case where the following conditions are met: (1) the political power of the Islamist and nationalist groups' political power is relatively balanced and (2) the state needs support or legitimacy from Islamist groups, as was the case in the second half of the New Order period. At this point, the state law was mainly to maintain unity, in particular to accommodate the Islamist group.

On the basis of the secularity of Pancasila and the development of state law related to religious life, the boundaries between the domain of the state and the religious domain in contemporary Indonesia can be identified:

- *First*, there is a clear distinction between state institutions, state law and religions. The state remains in a profane or worldly realm with all its rules and devices, which are also established and carried out in a secular manner. Nevertheless, state laws and policies continue to be influenced by reasons derived from religious teachings. Governance is in state's domain but religion can play a role by strengthening social ethics and influencing state policy and law through political mechanisms.
- *Second*, the state does not create laws that either require the implementation of certain religious teachings or interfere with religious freedom and worship. The state guarantees and facilitates religious freedom and freedom of worship with the only restriction being that religious actors should not endanger public order and security.

- *Third*, Islamic law can influence and be incorporated into state law. When it becomes state law, it becomes part of the secular and may be limited by the state.<sup>42</sup> This can be seen for example in the decisions of the Constitutional Court<sup>43</sup> regarding the limitation of religious courts' authority,<sup>44</sup> the limitation of polygamy within the juridical review of the Marriage Law,<sup>45</sup> and the regulation of *zakat* in the Zakat Management Law.<sup>46</sup>
- *Fourth*, the religious life that can be governed by the state law is related to the *forum externum*,<sup>47</sup> that is the social aspects of worship, human relationships, and especially aspects related to family law. When it comes to worship, the state only regulates the facilities, not the rituals of worship, such as in the Hajj Law.
- *Fifth*, public law (constitutional, administrative, and criminal) is the domain of state law alone, Islamic law never becomes public law. Public law must promote equality before the law, must not discriminate against any individual or group and thus cannot incorporate any specific religious laws.<sup>48</sup>

Secularisation of Islamic law through positivisation as state law

Public law free from religious influence to guarantee equality before the law for all Indonesians

To summarise, it can be said that Islamic law is limited in two ways when it comes to its possible incorporation into state law: (1) it may only deal with the *forum externum*; and (2) it may never be incorporated into public law. These two limitations on Islamic law are an expression of secularity for the sake of balancing or accommodating the diversity of Indonesian society.

42 Similar processes of secularisation through positivisation of Islamic law have been shown also by Saïd Amir Arjomand, "Secularisation through Legal Modernisation in the MENA-Region," in *Companion to the Study of Secularity*, ed. HCAS "Multiple Secularities – Beyond the West, Beyond Modernities" (Leipzig University, 2019), [www.multiple-secularities.de/publications/companion/css\\_arjomand\\_legal-modernisation.pdf](http://www.multiple-secularities.de/publications/companion/css_arjomand_legal-modernisation.pdf) for Syria and Tunisia.

43 Alfitri, "Putusan Mahkamah Konstitusi Sebagai Tafsiran Resmi Hukum Islam di Indonesia," *Jurnal Konstitusi* 11, no. 2 (2014): 313.

44 The Constitutional Court's Decision No. 19/PUU-VI/2008.

45 The Constitutional Court's Decision No. 12/PUU-V/2007.

46 The Constitutional Court's Decision No. 86/PUU-X/2012.

47 The Constitutional Court's Decision No. 140/PUU-VII/2009.

48 There are exceptions in Aceh where Islamic law can enter public law, which in practice is still limited to minor criminal violations.

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