

THE EXISTENCE OF ISLAMIC LAW IN THE LEGAL SYSTEM AND CONSTITUTION IN INDONESIA: REFLECTION OF ISLAMIC LEGAL THOUGHT AND POSITIVE LAW

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Abstract

The legal position of Islam in the Republic of Indonesia cannot be separated from the influence of the entry of Islam throughout the archipelago around 16-17 Hijri, where at that time the spreaders of Islam throughout the archipelago came from various Middle Eastern countries, such as India, Pakistan, Arabia, Egypt, Jordan, and others, they traded to the archipelago while spreading Islam, and on average they brought the Shafi'i school of thought. The historical journey of the transformation of Islamic Law with various dimensions, namely; historical, philosophical, political, sociological, and legal. The presence of Islamic Law in Indonesia can be seen from two sides, namely: Islamic law applies legally formally or codified in the National legal structure, so the current compilation of Islamic Law was born which recorded the regulations of Islamic Law that have been enforced so far. And Islamic Law applies normatively, namely; having sanctions or legal equivalents for the Muslim community. The 1945 Constitution, Indonesia's constitution, also expresses the character and spirit of Islam, a constitution that is neither theocratic nor secular.

Keywords: *Transformation of Islamic Law into National Law.*

Abstrak

Kedudukan hukum Islam di Negara Republik Indonesia tidak dapat dilepaskan dari pengaruh masuknya Islam ke seluruh wilayah Nusantara sekitar tahun 16-17 Hijriah, di mana pada saat itu para penyebar agama Islam ke seluruh wilayah Nusantara berasal dari berbagai negara Timur Tengah, seperti India, Pakistan, Arab, Mesir, Yordania, dan lain-lain, mereka berdagang ke Nusantara sambil menyebarkan agama Islam, dan rata-rata membawa mazhab Syafi'i. Perjalanan sejarah transformasi Hukum Islam dengan berbagai dimensi, yaitu; historis, filosofis, politis, sosiologis, dan hukum. Kehadiran Hukum Islam di Indonesia dapat dilihat dari dua sisi, yaitu: Hukum Islam berlaku secara legal formal atau terkodifikasi dalam struktur hukum Nasional, sehingga lahirlah saat ini Kompilasi Hukum Islam yang membukukan peraturan-peraturan Hukum Islam yang telah diberlakukan selama ini. Dan Hukum Islam berlaku secara normatif, yaitu; memiliki sanksi atau padanan hukum bagi masyarakat muslim. UUD 1945, konstitusi Indonesia, juga mengekspresikan karakter dan semangat Islam, sebuah konstitusi yang tidak teokratis dan juga tidak sekuler.

Kata kunci: Transformasi Hukum Islam ke dalam Hukum Nasional.

A. Background

The history of the development of Islamic law in the legal system in Indonesia, began in the 20th century AD, this is found in the Syafi'iyah discourse, because at that time there was a process of Islamization in Indonesia by Islamic figures from Gujarat, Arabia, and other Middle Eastern countries. In the 12th and 13th centuries the development of Islamic law at that time was in a period of crisis with the closing of the door of *ijtihad*, as the beginning of the lowest point, but in the next phase many figures and scholars sued, so that the door of *ijtihad* could be reopened. In the 20th century the ups and downs of the Islamic Law renewal movement in Indonesia were proclaimed by the political power of law which of course came from socio-culture, customs that always interacted in political decision-making in the Sultanate era.¹

During the independence period, Islamic law has experienced significant development, both through the Islamic political infrastructure and the Islamic political superstructure with social, cultural, and customary support that approached the process of Islamization of Islamic law in Indonesia. The implementation of Islamic law in Indonesia has experienced ups and downs, but along with the development of legal politics implemented by the Indonesian government, Islamic law in Indonesia has experienced significant development in the current reform era. Even behind the political decision-making process, Islamic law can run normally, considering the burden on the interacting socio-cultural forces, so that the demands of society for the implementation of Islamic law have been recognized in national law, such as marriage law, banking law, and so on.

According to M. Atho Mudzhar, Islamic law continues to develop, both through political infrastructure and political superstructure with the support of socio-cultural forces, differences in perspective and interpretation in the diversity of understanding of Muslims regarding the nature of Islamic law have implications for its application.² He said that differences of view in the field of Islamic legal thought are divided into four types, namely; *fiqh* books, religious court decisions, laws and regulations in Islamic countries and Ulama Fatwas. So that Islamic law in Indonesia is still in the order of ideals (*ius constituendum*) not in the order of application as positive law (*ius constitutum*). In order for Islamic ethical and legal values to be applied in Indonesian society, it is necessary for Islamic ethical and legal

¹ Fazlur Rahman, *Islam and Political Action: Politics in the Religion*, in Nige Bigger, et al (ed.), *Cities of God: Faith, Politics and Pluralism in Judaism, Christianity and Islam* (New York: Greenwood Press, 1986), 154.

² M. Atho Mudzhar, *Approach to Islamic legal studies in Theory and Practice* (Yogyakarta: Pustaka Pelajar, 1998), 21-30.

values to be instilled in the form of laws and implemented in society.³

In the concept of the Islamic constitutional legal system, it tends to explain more accurately how to prioritize morals/ethics in carrying out administrative duties and responsibilities, because the moral/ethical values of the state have been taught by the Prophet through the Qur'an and His Sunnah. According to Rahman "in Islam there is no separation between religion and state" meaning that religion and politics cannot be separated, this opinion represents Islamic figures, but in Indonesia religion and politics there are still those who argue separated, even though Muslims are the majority, then this idea is very unfounded.⁴ The concept of an Islamic state is very different from the case of the government in Indonesia, because the position of the president in the case of Indonesia, in addition to being the holder of government power, is also the head of state. So that in practice sometimes the president in Indonesia has a relatively large opportunity to act authoritarian and arbitrary.⁵

The Medina Charter is considered the state constitution at the beginning of the Islamic government, which was formed directly by the Prophet Muhammad, the contents of which have contained various provisions of regulations for the entire community, to obey all the regulations contained therein, this has been reflected in the Indonesian constitution, where the State of Indonesia is a democratic state, which has the ideology of Pancasila and the 1945 Constitution as the basic structure of the State.⁶ The first principle is Belief in the One Almighty God. Chapter XI of the 1945 Constitution states that the State guarantees the freedom of each resident to embrace their respective religions and worship according to their religion and beliefs.

The provisions of the 1945 Constitution are contrary to the direction of secularization and homogeneous theocracy. Because democracy according to the Constitution is Pancasila democracy. Each of the five principles, including Belief in the One Almighty God, is the basis of democracy in Indonesia. Therefore, the State does not separate religious affairs from the State. Religious affairs are official State affairs as established by the Ministry of Religion. So democracy is also inseparable from religious values, but not a religious State. The practice of the principle of Belief in the One Almighty God includes the shared responsibility of all

³ Mustafa, *Purification of Islamic Legal Philosophy: Wamallam yakum bima anzala Allah*, 1st ed (Purbalingga: CV. Eurengka Media Aksara, 2024), 412-431.

⁴ Fazlur Rahman. *Loc. Cit.*

⁵ Tap Number 1/MPR/1983 articles 105-109 jo. Tap Number IV/MPR/1983 on Referendum.

⁶ Lukman Hakim Syaifuddin, "Indonesia is a Religious Country: Formulating the Relationship between Religion and State in the Perspective of Pancasila" (Proceedings of the Pancasila Congress: Pancasila in Various Perspectives, Secretariat General and Registrar's Office of the Constitutional Court, 2009), 264-265.

religious groups and beliefs in the One Almighty God to continuously and together lay a solid moral, ethical and spiritual foundation for national development as an implementation of Pancasila and the 1945 Constitution.⁷

Based on the description above, the Indonesian nation in implementing the 1945 Constitution cannot be separated from religious life, so that negative responses to the 1945 Constitution have emerged, especially on Pancasila in the relationship between state and religion from Islamic political circles. While Pancasila was born in an atmosphere of spirituality to fight colonialism and imperialism, so that unity and brotherhood are needed among the heterogeneous components of this nation. With the existence of the One and Only God Principle, it becomes the most important factor to strengthen unity, togetherness and brotherhood among the children of the Indonesian nation, without distinguishing between tribes, races, groups, skin color, or religion, Pancasila was born as the glue to glue unity from Sabang to Merauke.⁸

B. Research Methods

This research is a normative legal research. Normative legal research is a scientific activity based on certain methods, systematics and thoughts that aim to study something or several certain legal phenomena, by analyzing them. Normative legal research is also called library research or document study because this research is conducted or aimed only at written regulations or legal materials.⁹ Among others; the Qur'an and Sunnah, the 1945 Constitution of the Republic of Indonesia, Law Number 50 of 2009, and secondary legal materials, obtained from dictionaries, encyclopedias, compilations of Islamic law and others.¹⁰

The nature of this research is descriptive legal research (descriptive legal study). Descriptive legal research means that researchers in analyzing want to provide a description or explanation of the subject and object of research as the results of the research they have conducted and here the researcher does not justify the results of his research. This research is also intended for exploration and clarification regarding a social phenomenon or reality, by describing a number of variables relating to the problem and the research unit between

⁷ Tap Number 1/MPR/1983 articles 105-109 jo. Tap no.IV/MPR/1983 on Referendum.

⁸ Kaelan MS, *Pancasila Education* (Yogyakarta: Paradigma, 2008), 76.

⁹ Soerjono Soekanto, *Normative Legal Research* (Jakarta: PT Raja Grafindo Persada, 2006).

¹⁰ Fazlur Rahman. *Loc. Cit.*

the phenomena being tested.¹¹

C. Results and Discussions

The development of Islamic law in Indonesia cannot be separated from the influence of Islam entering the archipelago in the early 12th and 13th centuries AD, where at that time the spreaders of Islam in the archipelago adhered to the Shafi'i school of thought. So that the historical journey of the transformation of Islamic Law is full of various historical, philosophical, political, sociological and legal dimensions. Islamic law in Indonesia consists of two sides, namely; First: Islamic law applies in a formal legal manner and/or is codified in the national legal structure. Such as the 1974 Marriage Law. Second; Islamic law applies normatively, namely it is believed to have sanctions or legal equivalents for the Islamic community. Islamic law is the law that is the basis for Muslims to live their lives in the world. Indonesia as a country with a majority Muslim population, indirectly makes Islamic law one of the laws adopted into normative regulations in Indonesia. Not all provisions in Islamic Law are applied in Indonesia.¹²

The Republic of Indonesia is a democratic country, not a religious state, or an absolute monarchy, nor is it secular, so there are three legal systems, namely; Customary legal system, Islamic legal system, and Western legal system (Dutch heritage). All three have their own characteristics and systems, growing and developing in society throughout Indonesia. Therefore, the legal system in Indonesia is called a pluralistic legal system. While the position of all three is stated in the legislation and developed by science and judicial practice. Islamic law can now be applied directly without going through Customary Law, although both laws have been in effect, but in its implementation it is still far when compared to the Dutch Heritage law which currently dominates the courts and legal system in Indonesia. The Republic of Indonesia can regulate a matter in accordance with Islamic Law, as long as the regulation applies only to Indonesians who embrace Islam. Apart from that, it can also be stated that now in the legal system in Indonesia, the position of Islamic Law is the same with Customary Law and Western Law. Islamic Law is a source for the formation of future National Law in addition to other existing laws, growing and developing in the Republic of Indonesia.¹³

¹¹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Prenada media Group, 2005), 191.

¹² Mardani, *Islamic Law, Collection of Regulations on Islamic Law in Indonesia, 2nd ed* (Jakarta: Kencana, 2016).

¹³ Amir Muallim, "Islamic Legal Ijtihad Method in Indonesia: Efforts to Bring Text Messages Together with Social Reality" (Paper, in the inaugural speech of the professorship of Islamic jurisprudence, Islamic University of

The discussion of Islamic law in Indonesia from a constitutional perspective can be explained that every citizen who is Muslim is obliged to study and practice Islamic Law in their daily lives, because of the command of the Islamic religion that they have believed in. This is a consequence for Muslims to carry out Islamic law. If someone is Muslim or declares himself to be Muslim, then he must submit to Islamic rules, not just claiming to be Muslim without carrying out his obligations as a Muslim seriously. The definition of religious rights only concerns the right to practice one of the religions that apply in Indonesia. So that in the implementation level regarding religious life, there needs to be actualization of the values of freedom that exist to provide enlightenment of the meaning contained in the 1945 Constitution.¹⁴

The emphasis on the obligation to carry out the sharia that is believed can be proven by carrying out the Pillars of Islam and the Pillars of Faith. So if the Islamic legal system in the perspective of the constitution is interpreted in a balanced way between rights and obligations, then it will be easy to realize legal order, a life of mutual tolerance, and peace. While Islam in the perspective of the constitution, in a constitutional legal manner, the 1945 Constitution protects the rights of citizens regarding freedom for adherents of Islam to carry out their obligations based on Islamic law.¹⁵ The existence of Islamic ideology in *expressive verbis* is found in the Opening of the 1945 Constitution as well as Pancasila, namely, "Belief in the One Almighty God" which seems to quote a verse in *Q.S. Al Ikhlas* in paragraph (1) namely "meaning" say that Allah is the One Almighty God ". In Article 29 paragraph (1) of the 1945 Constitution it is stated that "The state is based on Belief in the One Almighty God". So it can be concluded that the 1945 Constitution has high Islamic values and is closely related to *aqidah* (belief) in the life of the nation and state in Indonesia.¹⁶

The first principle of Pancasila, namely Belief in One Almighty God, is the basis of the other principles of Pancasila. This is described by Notonegoro with the hierarchical and pyramidal configuration of Pancasila. Hierarchical because the core content of the five principles shows a level, and pyramidal because each of the principles behind the other principles is a specialization of the principles in front of it. Thus, the One Almighty God is the basis of humanity, Indonesian unity, populism, and social justice, whereas the One

Indonesia, 2006).

¹⁴ Mustafa, *Al-Mawardi's Thoughts on the Welfare State and Its Relevance in the Reform Era in Indonesia 1998-2018, First printing* (Solok: Mitra Cendekia Media, 2021), 118-122.

¹⁵ Hazairin, *Islamic Legal Reform in Indonesia* (Jakarta: UIP, 1976).

¹⁶ Satya Arinanto, "Legal State in the Perspective of Pancasila" (Proceeding of the Pancasila Congress: Pancasila in Various Perspectives, Secretariat General and Registrar's Office of the Constitutional Court, 2009), 206.

Almighty God is a God who is humanitarian, united, populist, and socially just, so that each of the principles contains other principles. Notonegoro also emphasized that the principles of divinity and humanity comprise the whole of human life and are also the basis of the principles of unity, democracy, and social justice.¹⁷

Pancasila is transformed into tangible rules in the Preamble of the 1945 Constitution. The main ideas contained in the Preamble of the 1945 Constitution are Pancasila. The main ideas are the basis for making the articles in the body of the 1945 Constitution, so to understand the transformation of Pancasila in social life, it must analyze the articles of the 1945 Constitution which is the result of the implementation of the 1st, 2nd, and 5th principles relating to religious, humanitarian and socio-economic life.¹⁸ In the perspective of the constitution there is a balance regarding the relationship between the state, law, and religion. Religion as the first component is in the innermost circle position, proven by the principle of divinity as the first principle in Pancasila. The principles of Islamic law that are used as the ideal basis for *fiqh* are: The principle of *tauhidullah*, the principle of *insaniyah*, the principle of *tasamuh*, the principle of *ta'awun*, the principle of *silaturahmi*, the principle of justice, and the principle of benefit.¹⁹

According to Muhammad Thahir Azhary, Islamic law in the national legal system has various legal relevancies, both in the form of concepts and existing legal practices, namely as follows:²⁰

1. The principle of deliberation

In the main source of Islamic law, namely the Al-Quran, it explains that there are two verses that outline the principle of deliberation as one of the basic principles of *nomocracy* (rule of law) which has relevance to law in Indonesia, namely: *Qur'an Surah As-Syuira*: 38. شُورَ لِبَيْنَهُمْ وَأَمْرُهُمْ describes that in every matter concerning society or public interest, the Prophet as making a decision after holding a deliberation with his companions. And the second is in *Q.S. Ali-Imran*: 159. مَرِ الْأُ فِي وَشَاوَرُهُمْ namely; consult in every matter". The provisions in the two letters above are relevant to the fourth principle of Pancasila concerning deliberation.

¹⁷ P J Suwarno, *Pancasila Budaya Bangsa Indonesia* (Yogyakarta: Kanisius, 1993), 32-34.

¹⁸ Ibid, 35

¹⁹ Mustafa, *Human Essence and Existence: "Perspective of Islamic Legal Sources (Al-Qur'an and Sunnah), First printing* (Purbalingga: CV. Eurengka Media Aksara), 2023.

²⁰ Muhammad Thahir Azhary, *Legal State: Aspect of Principles Viewed from the Perspective of Islamic Law, Its Implementation in the State of Medina and the Present* (Jakarta: Kencana, 2007).

2. The principle of justice

The principle of justice is the most important principle in Islamic law. Because the word justice (*al 'adl, al qisth, and al mizan*) is the third most frequently mentioned in the Qur'an after the words "Allah" and "science". So it is concluded that Islam teaches people in the world to always act fairly by prioritizing high integrity. This is stated in the Qur'an Meaning: "O you who believe, be true enforcers of justice, witnesses for Allah, even against yourselves, or your parents and relatives". (*Q.S. An nisa: 135*)

Constitutionally, the concept and principle of justice can be found in the fifth principle of Pancasila, which is the basic foundation of the goals and ideals of the state (*staatsidee*) as well as the philosophical foundation of the state (*philosophische grondslag*).²¹

3. The principle of equality and human rights

The principle of equality in Islamic law includes equality in all fields including politics, law and social. Peace in the legal field provides a guarantee of equal legal treatment and protection for all people regardless of their original position. The principle of equal freedom is reflected in the provisions regarding the rights and freedoms of citizens (constitutional rights and freedoms of citizens).²² Regarding the legal equality rights between men and women (gender), it can be found in Article 27 paragraph (1), 28D paragraph (1) of the 1945 Constitution after the amendment. and in the Qur'an:

Meaning: "And divorced wives (must) restrain themselves (wait) three times quru'. It is not permissible for them to hide what Allah created in their wombs, if they believe in Allah and the Last Day. And their husbands have more right to return to them in that (period), if they want improvement. And they (women) have rights balanced with their obligations in an appropriate manner. But husbands have advantages over them. Allah is All-Mighty, All-Wise." (*Q.S. Al-Baqarah: 228*).

4. The principle of an independent judiciary, namely a judiciary

This principle is useful in providing justice for those seeking justice (*justiciabelen*). According to Abu Hanifah Justice means that the judicial power must be free from all forms of pressure and interference from the executive power.²³ Even this freedom also includes the authority of the judge to issue a verdict on a ruler if he violates the rights of the people. The principle of law is in accordance with the commandments in the Qur'an; Meaning: "Indeed, Allah commands you to convey the mandate to those who are entitled to receive it, and when you establish a law between people, you should establish it with

²¹ Ilhami Bisri, *Indonesian Legal System, Principles and Implementation of Indonesian Law* (Jakarta: Grafindo Persada, 2005).

²² Cristine Kansil, *Indonesian Government System* (Jakarta: Aksara Baru, 1985), 112-115.

²³ Hazairin, *Loc. Cit.*

justice. Indeed, Allah is the best of those who teach you. Indeed, Allah is All-Hearing, All-Seeing.” (Q.S. An Nisaa: 58)

The freedom that is meant is that you should establish it with justice. In the judicial field, normatively it is mandatory to include the words "For the Sake of Justice Based on the Almighty God" in every judge's decision. In addition, regarding the judiciary, there is a recognition of the existence of the Religious Court as an independent court. Religious courts are courts for Muslims with the authority to examine, try, decide, and resolve civil cases between Muslims.²⁴

5. The principle of welfare

In this principle there is a motivation for implementing the principle of welfare, namely the Islamic doctrine "*hablun min Alah wa hablun min annas*", namely the aspect of worship and the aspect of *mu'amalah*. In other words, the realization of the principle of welfare is solely aimed at realizing social justice in society. This is in accordance with Law Number 6 of 1974. Article 18A, Article 20, Article 21, Article 23 paragraph (1), Article 27 paragraph (2), Article 28C paragraph (1), Article 28H paragraph (1), paragraph (2), and paragraph (3), and Article 34 of the 1945 Constitution of the Republic of Indonesia.²⁵ The provisions of the legislation are as described in the Qur'an:

Meaning: *"If the people of the cities had believed and were pious, We would have bestowed upon them blessings from the heavens and the earth, but they denied (Our signs), so We seized them for their deeds. (Q.S. Al-A'raf: 96)*

The principle of divinity is based on the belief that humans are God's creations who were born to carry out the task of being caliphs on earth with the main task of managing nature in such a way as to realize the welfare and common good. There are many contradictions and controversies in realizing the national legal system, because not all of them are based on customary law and Islamic law and western law. So that the form of the constitution is an effort to make changes to something that already exists into something new, including through adjustments and changes.

The process of transforming Islamic law into the national legal system is intended as an effort to apply normative Islamic law into positive Islamic law or what is often called the effort of Islamic legal positivism into the Indonesian legal system. The existence of Islamic ideology *expressive verbis* is found in the Opening of the 1945 Constitution as well as

²⁴ Ahmad Ali, *Revealing Legal Theory and Judicial Theory Including Interpretation of Legisprudence Laws* (Jakarta: Kencana, 2009), 89.

²⁵ Ahmad Sukardja, *Medina Charter and the 1945 Constitution* (Jakarta: UI Press, 1995), 53.

Pancasila, namely, "Belief in the One Almighty God".²⁶ Article 29 paragraph (1) of the 1945 Constitution states that "The state is based on Belief in the One Almighty God". So it can be concluded that the 1945 Constitution has high Islamic values related to *aqidah* (belief) in the life of the nation and state in Indonesia.²⁷

From a constitutional perspective, there is a balance regarding the relationship between state, law, and religion, this can be seen from the aspect of Indonesian law which is very similar to the Medina Charter, because the source of law in Indonesia comes from the Dutch heritage. and Custom, on the other hand, the law in Indonesia is sourced from Islamic law. Islamic law is a source of law in Indonesia, due to the existence of Islamic values that are included in the literature of *fiqh* and fatwas of scholars. That is why it has a big influence on various laws and regulations set by the government. Thus, the 1945 Constitution is a very short constitution of the Indonesian state and only contains 37 articles, however, it contains general provisions of constitutional theory, so that its provisions are fulfilled in the 1945 Constitution.

Basically, to make changes or adjustments, it has indeed been formulated through Article 37 of the 1945 Constitution by the drafters of the 1945 Constitution itself, by formulating changes to the Constitution or amendments to the 1945 Constitution must go through the MPR (Majelis Permusyawaratan Rakyat) mechanism, which means that when there is an intention and purpose to change the Constitution, Article 37 of the 1945 Constitution. Based on MPR Decree Number I/MPR/2002 concerning the establishment of a Constitutional Commission tasked with conducting a comprehensive study of the amendments to the 1945 Constitution. However, before being submitted to the Constitutional Commission, a report was first made on the Amendments to the 1945 Constitution which was carried out in stages and became one of the agendas of the MPR Annual Session from 1999, until the fourth amendment at the 2002 MPR Annual Session.²⁸

In the history of the development of the Indonesian state, there are four types of laws that have been in effect, namely:

1. Period 18 August 1945-27 December 1949 (Establishment of the 1945 Constitution)

When the Republic of Indonesia was proclaimed on 17 August 1945, the Republic

²⁶ Fadlan Choirul Adillah, "Implementation of Living Values Education Pancasila Values In the Generation of Indonesians," *Jurnal Multidisiplin Indonesia* 1, no. 1 (2022): 1-6. <https://doi.org/10.57235/qistina.v1i1.15>.

²⁷ Rozali Abdullah, *Pancasila as the State Philosophy and the Nation's Outlook on Life* (Jakarta: Rajawali, 1989).

²⁸ Satya Arinanto, *Loc. Cit.*

of Indonesia did not yet have a constitution, but a day later on 18 August 1945 the Draft Law was ratified by the PPKI as the Constitution of the Republic of Indonesia after going through several processes.

2. Period 27 December 1949-17 August 1950 (Establishment of the constitution of the Republic of Indonesia Serikat)

The journey of the Republic of Indonesia was not free from the Dutch who wanted to return to power in Indonesia. As a result, the Dutch tried to establish countries such as; the state of East Sumatra, the state of East Indonesia, the state of East Java, and so on. In line with these Dutch efforts, the first Dutch aggression occurred in 1947 and the second aggression in 1948. And this resulted in the holding of the Round Table Conference which gave birth to the state of the Republic of Indonesia Serikat. So that the Constitution which should apply to the entire country of Indonesia, only applies to the state of the Republic of Indonesia Serikat.

3. Period 17 August 1950-5 July 1959 (Establishment of the Temporary Constitution of 1950)

The federal period of the Constitution of the Republic of Indonesia Serikat 1949 was a temporary change, because in fact the Indonesian nation since 17 August 1945 wanted a unitary nature, so the state of the Republic of Indonesia Serikat did not last long because of the merger with the Republic of Indonesia. This resulted in the authority of the government of the Republic of Indonesia being reduced, finally an agreement was reached to re-establish the Unitary State of the Republic of Indonesia. For the unitary state that would be established, it was clear that a new constitution was needed and for that a joint committee was formed to draft a constitution. then ratified on August 12, 1950 by the working body of the central national committee and by the People's Representative Council and the Senate of the Republic of Indonesia on August 14, 1950 and the new constitution came into effect on August 17, 1950.

4. Period July 5, 1959-present (Determination of the re-enactment of the 1945 Constitution)

With the Presidential Decree of July 5, 1959, the 1945 Constitution came into effect again. And the change of the Provisional People's Consultative Assembly of the Old Order in the period 1959-1965 to the Provisional People's Consultative Assembly of the New Order. The change was made because the Provisional People's Consultative Assembly of the Old Order was considered less reflective of the implementation of the 1945 Constitution purely and consistently.

At the beginning of the reform era in 1998, one of the demands from various parties was to amend the 1945 Constitution. During the New Order era, the 1945 Constitution was "sacred" and one of the blessings of reform was the amendment to the 1945 Constitution. Therefore, an amendment to the 1945 Constitution was made as a mandate of reform, which was finally completed in the fourth amendment with the official name of the 1945 Constitution of the Republic of Indonesia.²⁹

The four amendments can be detailed as follows:

- a. The First Amendment to the 1945 Constitution, which was enacted on October 19, 1999, was successfully amended by 9 articles.
- b. The Second Amendment to the 1945 Constitution, which was enacted on August 18, 2000, was amended by 25 articles.
- c. The Third Amendment to the 1945 Constitution, which was enacted on November 9, 1999, was successfully amended by 23 articles.
- d. The Fourth Amendment to the 1945 Constitution, which was enacted on August 10, 2002, has successfully amended 13 articles as well as 3 articles of Transitional Provisions and 2 articles of Additional Provisions.

After the Amendment to the 1945 Constitution, the guarantee of diversity has become clearer and stronger, both in the form of individual rights, collective rights, and government units. The provisions of the 1945 Constitution that guarantee diversity in the form of individual rights include Article 28E Paragraphs (1), (2), and (3); Article 28 I Paragraph (2); and Article 29 Paragraph (2). Article 28E Paragraph (1) guarantees the right of every person to freely embrace a religion and worship according to their religion. Article 28E Paragraph (2) states that every person has the right to freedom of belief, to express thoughts and attitudes, in accordance with their conscience. Article 28E Paragraph (3) guarantees the right of every person to freedom of association, assembly, and to express opinions.

Article 28I Paragraph (2) explicitly states that "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment". Specifically, for freedom of religion and worship, it is a guarantee of diversity in terms of religion. This is emphasized in two provisions, namely Article 28E Paragraph (1) and Article 29 Paragraph (2) of the 1945 Constitution. In fact, in Article 28I Paragraph (1) of the 1945 Constitution. From the discussion of the format and content of the

²⁹ Mustafa, *Al-Mawardi's Thoughts on the Welfare State and Its Relevance in the Reform Era in Indonesia 1998-2018*, Loc. Cit.

Medina and Indonesian constitutions, phenomenologically, it appears that transcendental values greatly influence the formulation and content of both.

The values of faith and devotion to God Almighty underlie and color many of the sentences in the contents of both. Diversity is reflected in the constitution before the Amendment to the 1945 Constitution, provisions related to protection of diversity are contained in the guarantee of the freedom of each resident to embrace their religion each and to worship according to his religion and belief (Article 29 Paragraph (2) of the 1945 Constitution before the amendment). It is emphasized that the right to freedom of thought and conscience, as well as the right to religion are basic rights that cannot be reduced under any circumstances. The basis of religious tolerance in the Medina Charter has a very substantial and fundamental legal force. The idea of the Medina Charter is purely Islamic because it is derivatively rooted in the values of the *Qur'ar al Karim*:³⁰

“And I have never been a worshiper of what you worship”

* And you have never been (also) a worshiper of the God I worship

* For you is your religion, and for me is my religion. (*al Kafirun*: 4-6)

The constitution of the Medina charter initiated by the Prophet Muhammad SAW, and the constitution of the government of the Republic of Indonesia at the beginning of independence in 1945. Both constitutions accommodate all elements of religion, meaning relatively diverse and plural, there are Muslims, Catholics, Protestants, Hindus, and Buddhists, all of which are formulated in the Medina Charter and the 1945 Constitution, all of these religious beliefs create unity, harmony, security, order, justice and the welfare of all citizens. Between the Medina Charter and the 1945 Constitution, there are striking similarities, both in ideas and formulations, both of which require the establishment of a strong unitary state, as well as citizens who believe in God Almighty.

Thus it can be said that all the words and sentences of the 1945 Constitution seem to have similarities with the Medina Charter. Although ideologically, philosophically and regionally, both are different. The Medina Charter has an Islamic ideology, while the 1945 Constitution adheres to the Pancasila ideology, but this is not considered a principle, what is clear is that both do not separate religion and state. Religion as the controller of the State, on the other hand the state as a container for the spread of religion.³¹

³⁰ Lukman Hakim Syaifuddin, *Loc. Cit.*

³¹ Mustafa, *Human Essence and Existence: "Perspective of Islamic Legal Sources (Al-Qur'an and Sunnah)*, *Loc. Cit.*

D. Conclusions

The Medina Charter constitution and the 1945 Constitution in their positions as state constitutions, in substance there are many similarities, this can be seen from various sides, especially in terms of the general principles in them, but one thing that distinguishes the two is; The Medina Charter uses a classical format following the era of its formation, while the 1945 Constitution uses a modern form and format, although in accordance with the era of its creation. The Medina Charter constitution as stated in the book Sirah an-Nabby ibn Hisham is arranged in a series and is not divided into articles and is not in the form of poetry, the word "*Bismillahirrahmanirrahim*" is the opening word. Many Muslim and non-Muslim scholars follow the text of the Medina Charter.

While the Constitution of the 1945 Constitution according to the era of its formation has a format according to Muhammad Yamin, the format of the Indonesian constitution is the result of the decision of the PPKI meeting on August 18, 1945. The 1945 Constitution consists of three parts, namely:

1. The preamble to the constitution which is called the opening section
2. The body of the constitution consisting of 115 chapters containing 36 articles
3. The closing part of the constitution, namely chapter XVI containing article 37 concerning amendments to the 1945 Constitution, plus transitional rules containing 4 articles and additional rules consisting of two paragraphs

Both of them clearly expressed their Islamic spiritual character and spirit in the text of the 1945 Constitution, namely a Constitution that is not theocratic but also not secular. Thus it can be stated that the Medina Charter and the 1945 Constitution can be called the same constitution, even though they were formed in different eras.

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