ALFIQH Islamic Law Review Journal

Volume 03 No 01, 2024

[ARTICLE]

RATIONALE ECONOMICS IN ISLAMIC LAW LEGISLATION IN INDONESIA Shaping Political-Legal Dynamics Post-Reformation (1999-2020)

Junaidi Abdillah[1], Ahmad Zubaeri[2], Nurul Huda[3]

[1] UIN Walisongo Semarang Jawa Tengah, Indonesia
[2] UIN Walisongo Semarang Jawa Tengah, Indonesia
[3] UNU Sunan Giri Bojonegoro Jawa Timur Afiliasi, Indonesia

Contact
Junaidi Abdillah
UIN Walisongo Semarang,
Jalan Walisongo No 3-5
Semarang 50185, Jawa Tengah, Indonesia.
junaidi@walisongo.ac.id

How to cite
Abdillah, J., Zubaeri, A., & Huda, N. (2024). RATIONALE ECONOMICS IN ISLAMIC LAW LEGISLATION IN INDONESIA : Shaping Political-Legal Dynamics Post-Reformation (1999-2020). *ALFIQH Islamic Law Review Journal*, *3*(1), 41–57. Retrieved from https://ejournal.tamanlitera.id/index.php/ilrj/article/view/181

History
Received: April 03, 2024
Accepted: April 18, 2024
Published: April 25, 2024

Abstract: The reform era (1999-2020) with its democratic faucet succeeded in presenting an interesting phenomenon of legal political struggle (siyasah syar'iyyah). Proven by the birth of 13 laws and a number of faith-based regional regulations in Indonesia. This paper aims to find a portrait of the legal and political struggle after the 1999-2020 reform and economic factors (rationale) in Islamic legal legislation in Indonesia after the 1999-2020 reform. This paper uses documentary-historical methods through a legal sisociology approach. While the analysis knife is critical hermeneutics. This paper finds the following findings that: First, the political and legal struggles after the 1999-2020 reform in Indonesia are very dynamic and intense. This can be seen from the model of using omnibus law in the Job Creation Law. Several changes lead to investment and ease of businesspeople to develop sharia business. Second, the transformation of Islamic law in Indonesia has presented a different character and model with the formulation of three foundations of a law designed by experts. It appears that the economic factors of the ummah are the main basis in the post-reform law formation model.
Keywords: rationale economics, Islamic law legislation, political-legal dynamics, post-reformation

Abstrak: Era reformasi (1999-2020) dengan kran demokrasinya berhasil menyuguhkan fenomena pergulatan politik hukum (siyasah syar'iyyah) yang menarik. Terbukti dengan lahirnya 13 PerUU dan sejumlah Perda berbasis agama di Indonesia. Paper ini bertujuan untuk menemukan potret pergulatan hukum dan politik pasca reformasi 1999-2020 dan anasir (rationale) ekonomi dalam legislasi hukum Islam di Indonesia pasca reformasi 1999-2020. Paper ini menggunakan metode dokumenter-historis melalui pendekatan siosiologi hukum. Sementara pisau analisis adalah hermeneutika kritis. Paper ini menemukan temuan-temuan sebagai berikut bahwa: Pertama, pergumulan politik dan hukum pasca reformasi 1999-2020 di Indonesia terjadi sangat dinamis dan intens. Hal ini terlihat dari model penggunaan omnibus law dalam UU Cipta Kerja. Beberapa perubahan mengarah kemudiahan investasi dan kemudahan para pelaku bisnis untuk mengembangkan bisnis syariah. Kedua, transformasi hukum Islam di Indonesia telah menghadirkan karakter dan model yang berbeda dengan rumusan tiga landasan sebuah UU yang dirancang para ahli. Tampak faktor ekonomi umat menjadi basis utama dalam model pembentukan UU pasca reformasi.
Kata Kunci: anasir ekonomi, legislasi hukum Islam, dinamika politik-hukum, pasca-reformasi.

A. Introduction

Research related to the politics of religious law into the Regulations of the Legislation, later written the Constitution in Indonesia mainly post-reformation (1999-now) much focused on the policy of the law in the context of the basis of political opportunities Islamic law becomes the law of the state[1]. In fact, when examined more deeply, the purpose of the creation of a state law based on religious law, in addition to the goal of unification and guaranteeing the implementation of religious life, is to maximize the economic potential of the people.[2]. The practical political approach becomes apparent because, in reality, between the legal entity and the political entity, within the framework of the rule of law and its rule-of-law, they are mutually overlapping and filling one another [3]. This thesis then gave birth to three theories related to the relationship of law and politics in general as well as in Indonesia. First, the law of the determining entity of the political entity. In other words, the law acts as a guide and controller of political activity. Secondly, the political entity has a strong influence on the legal entity. It means that, in fact, both the normative legal product and its enforcement, are largely coloured and influenced by political entities. Third, politics and law are embedded in interdependent relations, which means that politics without law creates anarchism and law without politics is paralyzed[4]. It is no surprise that the majority of scholars are more focused on the political sphere as their research approach is mainly in the political subjects of national law.

Looking at the political research variable of post-reformation law (1999-2000), it can generally be categorized into three subjects, namely: First, the variable relates to the scientific approach. The findings of this research emphasize the importance of the transformation of values, the principle of normalization, healthy competition between the laws, building objectivism of Islamic law in the attempt to formalize Islamic laws. In these ways then the Islamic law that becomes national law is not based on formal-symbolic aspects merely. The result of such a law can reflect good law because it grows in society. Secondly, the research subject is based on a political approach. This research theme mostly makes the entity of democracy a means of formalizing Islamic law. Besides, it is a political theme often associated with the opportunities and challenges of Islamic law in the context of national law development. These themes usually characterize pancasila democracy as the crane and gateway for Islamic law to enter the *prolegnas* (National Legislation Programme). With the struggle through the pillar of democracy in the legislative, the opportunities

[1] Nurrohman Nurrohman, "Hukum Islam Di Era Demikrasi: Tantangan Dan Peluang Bagi Formalisasi Politik Syariat Islam Di Indonesia," *Addin* 9, no. 1 (2015): 161–80.

[2] M. Zaki Mubarak dan Lim Halimatusa'diyah, *Politik Syariat Islam: Ideologi Dan Pragmatisme* (Jakarta: Pustaka LP3ES, 2014).

[3] Ahmad Gunaryo, *Pergumulan Politik Dan Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2006).

[4] Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: LP3ES, 2006).

of Islamic law are wide open. Political subjects cannot escape from the context of the *Prolegnas*. In *Prolegnas* there is executive and legislative involvement. In other words, legislation in the era of reform was not only the domain of the government, Ministry of Law and BPHN, but also the legislative work of the DPR.

The third is the subject relating to the material aspect. These researches relate to transformations, changes, upgrades and material reforms of Islamic law. This means that in order for Islamic law to be accepted into Indonesian law, internal updates of Islamic legislation themselves must be carried out through the appropriate methodology. The updating then confirms the birth of reconstruction and reformulation. This is what then forms the laws of Indonesia. The quantity of these research subjects is not far inferior to the two topics above.

In addition to the above three research subjects, the arguments of the scholars for seeing the uniqueness of Indonesia as a "grey" country. Indonesia, which has juridically-constitutionally proclaimed itself a Pancasila state, is in the middle position, between the religious paradigm and the state. This means that Indonesia is neither a religious nor a secular state. Indonesia really represents a religious nation-state or national state that is religious[5].Thus, the consequence of this paradigm is that religious entities, including Islamic law, do not automatically constitute the basis of the state or the law.

As a non-religious or secular state, through the ideology of the Pancasila, the Government of Indonesia is associated with the development of national law, so religion (read: Islamic law) is recognized as a sub-system in national law in addition to Western law and Aboriginal law. Three can contribute and color in the national legal system [6]. Of the three legal subsystems, it appears that Islamic law has shown an interesting configuration in its transformation into national law. An astonishing fact when a religion considered sacred, turns out to be able to meet a state entity viewed as profane[7]. From the era of independence to the age of reformation, Islamic law has shown its elegance through its transformation into national law.

Elegance appears to be more pronounced in the era of reform that has begun since 1998. In this era, Islamic law undergoing this phase undergoes its most dynamic and productive relationship with national legislative activity. It can be seen from the birth of a number of Legislative Regulations born in this era. Data suggests that in the early decade of the era of reforms have been born 13 Legislative Regulations, 1 PP, 1 PERMA, and 78 peripherals from 52 cities and 470 cities in Indonesia. The amount is much higher when compared with the previous era, namely the New Order. There are a number of laws that were born in the era of reforms, for example (1) the RI Law on

[5] Moh. Mahfud MD, *Politik Hukum Di Indonesia*, (Edisi Rev (Jakarta: Rajawali Pers, 2009).

[6] Ainun Najib, "Legislasi Hukum Islam Dalam Sistem Hukum Nasional," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 4, no. 2 (2020): 116–26, https://doi.org/10.35316/istidlal.v4i2.267.

[7] Hasyim Muzadi, *Nahdatul Ulama Di Tengah Agenda Persoalan Bangsa,* cet. 1 (Jakarta: Logos Wacana IlmU, 1999).

Banking that allows the use of Sharia Principles; (2) the RI Act on Maintenance of Hají Worship (3) the 2011 Law on the Management of Zakat; (4) the Special Autonomous Maintaining Act of Nangroe Aceh Darussalam (5) the Law that regulates the provisions of the Islamic Party; (6) the Law on Foundation (7) the Presidential Decision on the National Acting Body (8) the Wakaf Act (9) the Government Regulations on the Implementation of Wakaf (10) the RI No. 3 Law of 2006 on Amendments to the Law No. 7 of 1989 on the Religious Court (11) the RI Decree No. 19 of 2008 on the State Charter of Charter (12) the 21st Law of 2008 concerning Sharia Ban (13) the 23rd Law of 2011 concerning the Administration of the Zakat. Besides, there are some legal products of government religious institutions such as (1). MUI Fatwa Decree No. 4/Munas VII/MUI/08/2005 concerning marriages of different religions (2) Fatwa Resolution of the Ulama Council, May 11, 2002 concerning Money Wakaf (3) Fatwa resolution of MUI No. 3 of 2005 concerning Income Zakat [8].

From the point of view of productivity, the reform phase is the most legalizing phase of the source law of Islamic law. That is, in the course of two decades, have been born 13 laws and 3 legal products of other government agencies. This figure is much more in line with the phase of the new order which only gave birth to six treaties over a period of three decades. This means that the phases of reformation have exceeded 100% more of the aspects of Islamic legislation than the previous phase. Moreover, with the time not exceeding 30 years it can be said that this phase is a very productive phase.

The above data have been used to reflect the fact of the conflict between law and politics while reflecting the success of the "meeting point" between the state and religion in the framework of national law development. The real implication of the legislation of Islamic law is the discretion towards the upgrades of both the material (substantive) and methodological aspects of the Islamic Law itself. It is closely linked so that the national laws that are formed are acceptable to all groups that are binding and have legal certainty. On the other hand, from the external aspects of Islamic law itself, the formulators of national law also consider the nature of the law that is born to be the self and the legal spirit of the society itself. Neither philosophical, sociological, nor juridical. There's a lot of scientists who've been studying these three branches in their research. In the writer's minds, these three fountains are micro-elements that can be easily identified. The macro element or the big paradigm that encompasses a birth contract is rarely discussed.

The author also sees, by referring to the legislative product in the era of reforms loaded with the spirit of the government in developing the economy of the people. In the legal political context, the creation of state law relating to religion can be seen from the objective of existence consisting of three. First, to unify the laws applicable to Muslims, second, to optimize the economic potential of Muslims and third, to protect

[8] M. Shohibul Itmam, *Positivisasi Hukum Islam Di Indonesia* (Ponorogo: STAIN Po-Press, 2016).

and facilitate the practice of religious life[9].This second purpose appears once in the formulation of the Act. In other words, almost all the products of the Law are related to the economic interests of the nation. It is seen the Syrian Banking Act, Wakaf Act, Zakat and Haji Management Act, Sukuk Act and others. Thus, the aspect of economic development became the main policy of legal politics in the era of reforms very prominent. The compilation of the Islamic Law (KHI) contains three books, only the wakaf aspects of which are covered in the Book III when this has experienced an increase in the legal hierarchy from the Presidential Instruction to the Law. While the book I relates to Marriage and the book II relating to Inheritance is still limited to President instruction. This means that the rationalization of the wakaf aspects of the economy of the people is a strong proof that the economic rationale is the basis of the policy of the stakeholders in the publications of the Treaty.

The author has the thesis that whatever ideas are embodied in religious or other forms does not appear and is born in an empty space and emptiness [10]. In other words, the birth of an idea or idea (read: legislation) is a thing of course under the shadow of a certain paradigm that surrounds it[11]. Including the legislative activity of Islamic law in Indonesia, as part of the political entity of law, cannot be exempt from this axiom.

Dialectics, the clash between Islamic law and the state must be seen as a social fact that has given rise to exemplary law. This piece of law is born of a particular paradigm building associated with its socio-historical context. Thus, looking for a picture of the situation and conditions of the society and the policy of the government of Indonesia post-reform becomes very important to do. This is the main focus of this writing, as well as the distinction between previous discoveries. Starting from the above elaboration, this article answers the questions: (a) how does the legal and political context of the post-reformation 1999-2020 portray? (b) How does the economic rationale form in the legislation of Islamic law in Indonesia after the 1999-2020 reformation?

Paper with this qualitative type uses documentary-historical methods. This means that the data is obtained through the study of documents in the form of copies of the legal product of the Act born in the period of history, namely post-reformation 1999-2020. The data is then collected and analyzed through a sociological approach to knowledge. Analysis knife with content analysis methods, deductive-inductive alongside critical analysis writer.

[9] Muchamad Ali Safa'at, *Dinamika Negara Dan Islam: Dalam Perkembangan Hukum Dan Politik Di Indonesia* (Jakarta: Konstitusi Press, 2018).

[10] George Ritzer, *Sosiologi Ilmu Pengetahuan Berparadigmaaa Ganda* (Jakarta: Raja Grafindo Persada, 2003).

[11] Muhyar Fanani, *Metode Studi Islam; Aplikasi Sosiologi Pengetahuan Sebagai Cara Pandang* (Pustaka Pelajar, 2010).

B. Politics of Islamic Law: Theoretical Perspective

The law of Islam is the meaning of the rules of the Qur'an and the Sunnah, whether direct or indirect, which govern the conduct of human beings recognized and believed and mandated by the people of Islam [12]. In a more plain language, Mujiyono Abdillah presented the understanding of Islamic law with a sociolinguistic approach. According to him, the word law means a set of regulations established by competent and multilaterally binding for its citizens as an effective social security for the realization of justice. The Prophet (peace and blessings of Allah be upon him) said: "Islam is a religion whose teachings have been revealed to mankind through the Prophet Muhammad and if these two words are combined then it can be understood that the law of Islam is a set of rules concerning the deeds of men established by those who are competent based on the revelation of Allah that binds the Muslims in order to realize justice [13].

Furthermore, when Islamic law meets with the state, the term '*Tahnin al-ahkam*' or legislation and formalization is born. This performance is commonly known as the policy of law (*siyasah syar'iyyah*) whose outcome is the law of the state. Qānūn is a *mashdar* form of *qanna-yaqunnu* which means making laws [14]. Abu Zahrah argues that *taqnīn* has two meanings, the general and the special. In the general sense, it is the establishment of a set of rules or laws by a ruler who has the force to regulate relations in a society, while in the special sense it means the imposition of a series of rules and laws by the ruler with the force of regulating a particular matter, such as civil, criminal or other matters [15]. Legislation (*taqnīn al-ahkām*) here can also be understood as the compilation of Islamic laws in the form of a book of laws that is properly structured, practical and systematic, then formally established and enacted by the head of state, so that it is binding and mandatory to be implemented and obeyed by all citizens. There are two main elements in the Qur'an: (1) *al-ilzām*, that is, that every law is to be followed and enforced by every citizen, as it is also to be applied by every *qādhi* (judge) because of its official character. (2) the nature of al-ījāz wa ijmāl is summarized and global. That is, the basic character of *qānūn* is to unite the various *madzhab* that exist in the field of fiqh also globalizes all the flows (*madzhab*) in fiqh so that it applies to all[16].

Moreover, since the law is a political product, borrowing the term Daniel S. Lev that the most defining in the legal process is the conception and structure of political

[12] Akh. Minhaji, *"Hukum Islam: Antara Profanitas Dan Sakralitas, Perspektif Sejarah Sosial"* (Yogyakarta: UIN Sunan Kalijaga, 2004).

[13] Mujiyono Abdillah, *Dialektika Hukum Islam Dan Perubahan Sosial* (Surakarta: Universitas Muhammadiyah Surakarta, 2003).

[14] Achmad Warson Munawwir, *Kamus Al-Munawwîr Versi Indonesia-Arab*, cet I (Surabaya: Pustaka Progressif, 2007).

[15] Muhammad Abu Zahrah, *Al-Islām Wa Taqnīn al-Ahkām*, 1997.

[16] H. Y. Sonafist et al., "Ibn Al-Muqaffa's Proposal for Taqnīn and Its Synchronization with Islamic Law Codification in Indonesia," *Samarah*, 2020, https://doi.org/10.22373/sjhk.v4i2.7864.

power, then the Islamic law that became the ideals and the soul of the Muslims in the country required the interference of power through legislation [17]. In this connection, according to Satjipto Rahardjo that the law is a political will so that the legislator is charged with certain interests. As a result, the area of legislation becomes a field of conflict and interest-fighting. The legislature will reflect the configuration of the forces and interests that exist in society [18].

Law obedience is born of a law enforcement process. In order for law to be effective, state law is based on three types of law: jurisprudential, philosophical and sociological. The jurisprudence of how the law has a certainty, if not followed by the existence of sociology then the law is like a rule that has no validity. The philosophical validity means that the law as the sphere of the idea has no ability to ground, when not following with the application of the legality of the jurisdiction. The sociological treatment of how the law can be perceived, when it is not based on a sense of certainty and justice [19].

C. Political and Legal Discourse

Islamic law associated with political circles has been a central and important issue since ancient times. Nowadays in Indonesia, the application of Islamic Shariah is increasingly demanded for its application in society as well as in public spaces. On the basis of the theory of the 'political configuration' the substantive values or doctrines of Islamic law can be positivized and combined eclectically with the doctrine of Western and Aboriginal law to be interpreted as national law or Indonesian law. The substantive values contained therein can be universally applied to the common interest in order to build the future of nations for peace, humanity and justice (Mahfud MD, 1998).

Legislation of Islamic Law in the Acceleration of the Legal System (Konsumtif-Produktif)

Property transfer is a holy, noble and honorable act of law, performed by a person or body, by separating a portion of his wealth, which is the property of the land, and placing it forever as a social vessel[20].The same is the case with the application of the rule of law that occurs in Zakat. The comparison between productive zakat and productive wakaf can be seen from several things, including the basis of the law, the person who issued, the owner of property, management, and the person entitled to

[17] Daniel S. Lev, *Hukum Dan Politik Di Indonesia* (Jakarta: LP3ES, 1990).

[18] Satjipto Rahadjo, *Sosiologi Hukum, Perkembangan, Metode Dan Pilihan Masalah* (Surakarta: Muhammadiyah University Press, 2002).

[19] Soerjono Soekanto, *Penegakan Hukum* (Jakarta: RajaGrafindo Persada, 1983).

[20] I.S. Budi and S. Harsono, "THE EFFECT OF BRAND IMAGE AND PRODUCT ON CUSTOMER SATISFACTION AND WILLINGNESS TO PAY AT COFFEE BEAN SURABAYA," *Russian Journal of Agricultural and Socio-Economic Sciences* 73, no. 1 (2018): 146–54, https://doi.org/10.18551/rjoas.2018-01.19.

receive. The five things above tell us that there is a similarity between the two, that is, both are Islamic philanthropy that has a vision of the expropriation of treasures. However, there are some differences: first, zakat is compulsory, while wakaf is sunnah; second, the zakat can be distributed directly, while in wakaf, the distributed is the result and should not be held because of its durability. Productive Zakat and productive Wakaf are considered to be part of the change of Islamic Shariah in Indonesia because they are both an Islamic philanthropy that is constantly developing. The shift of zakat and wakaf that was once tied to the consumption pattern towards the productive pattern is the result of social change influenced by several factors: (1) development of physical development, (2) cultural change, (3) population growth and development of new technologies, (4) the presence of social movements, and (5) changes in ideas, values, and views of life[21].

The theory with the concept of "deconstruction of the sharia'ah" on the rules of Zakat and Wakaf. In our view, the Shari'ah is not the whole of Islam itself, but merely an interpretation of its basic text as understood in a particular historical context. The interpretation and practice of diversity cannot be separated from the sociological, economic and political conditions of a particular society, of course there are local variations and peculiarities, such as the legal system of religion such as Shariah. Thus, the Shariah that has been compiled by the pioneering legal experts can be reconstructed on certain aspects, with a permanent record based on the same basic Islamic sources and fully in accordance with the moral and religious message. Their role as religious practitioners is not only aimed at providing various means of worship and social, but also has a potential economic power, among others to advance the common welfare, so that it is necessary to develop and enhance its use in accordance with the principles of Shariah[22].

Government programmes related to accelerating land certification are being synchronized. In addition to avoiding obstacles in building an accurate database of walker assets, the absence of certificates could potentially lead to disputes and loss of assets. The program is in line with the reformist typology. This thinking is more specific than divided into two tendencies. First thinkers tend to use the method of a reconstructive approach, which is to look at tradition with the prospect of reconstruction. The tendency to believe that between *turath* (tradition) and modernity both are good. The problem is, how to deal with both fairly and wisely in a

[21] Muslihun Muslihun, "Dinamisasi Hukum Islam Di Indonesia Pada Zakat Produktif Dan Wakaf Produktif: Sebuah Studi Perbandingan," *Al-Manahij: Jurnal Kajian Hukum Islam* 8, no. 2 (1970): 199–216, https://doi.org/10.24090/mnh.v8i2.408.

[22] SA Nugraheni Eti Rimawati, "METODE PENDIDIKAN SEKS USIA DINI DI INDONESIA," *Jurnal Kesehatan Masyarakat Andalas*, 2019.

way that harmonizes both without misrepresenting common sense and rational standards, which are at the heart of reformation[23].

The tendency of Zakat and Wakaf toward productive direction. So that a reconstructive change needs to be done in some regulations either in terms of the law or PP related to both. Basically, Islamic sharia with a productive model advances the use of wahaf and zakat in order to have greater utility in the economic sphere.

D. Economic Rationale in the Legislation of Islamic Law

In the era of reform and democracy as well as the autonomy of the regions that are now being encouraged in Indonesia appeared some 13 statutes and more than 20 districts in Indonesia that issued the Rules of the Islamic Shariah or more well known as the Peraya Shari'at or the rule of the area which in its composition is based on the Hokum Islamic[24].

It is acknowledged that the political forms of Islamic law have been established especially in the run-up to the era of reformation. Politics of Islamic law in Indonesia has gained a constitutional place that is based on three reasons, namely: first, the philosophical reason, the teaching of Islam is the life view, morality and legality of the Muslim majority in Indonesia, and has an important role in the creation of the fundamental norms of the state of Pancasila. Second, the sociological reason, that the development of the history of the Indonesian Islamic society shows the spirit of law and the legal consciousness of the Islamic teaching has a continuous level of actuality. Thirdly, the jurisdictional grounds set forth in Articles 24, 25 and 29 of UUD 1945 give place to the existence of Islamic law in a jurisdictional manner[25].

1. Wakaf and Zakat Law Aspects

Interestingly, in connection with the dynamics of the Wakaf law, MUI through its Fatwanya commission gave birth to new provisions in the field of more progressive wakaf objects. Where the fatwa is born that the coverage of the wakaf may be (1) cash (waqaf money) either from individuals or institutions (2) securities (3) the value of the assets of waqaf money must be guaranteed its sustainability, not to be sold and redeemed or inherited.

The MUI Fatwa above appears to be the material basis for the Wakaf law update in Indonesia. This is evident from the Wakaf law which seems to accommodate the

[23] Luthfi Assyaukanie, "Religion as a Political Tool Secular and Islamist Roles in Indonesian Elections," *Journal of Indonesian Islam* 13, no. 2 (2019): 454–79, https://doi.org/10.15642/JIIS.2019.13.2.454-479.

[24] Nurrohman, "Hukum Islam Di Era Demikrasi: Tantangan Dan Peluang Bagi Formalisasi Politik Syariat Islam Di Indonesia."

[25] Muhammad Maksum, "Politik Hukum Ekonomi Islam Di Indonesia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 13, no. 02 (2018): 1–14, https://doi.org/10.30631/al-risalah.v13i02.416.

MUI fatwa. It appears in Wakaf's article 16, paragraph 1. Time travel, after the official Law No. 41 2004 was passed then clearly form updates-updates in the legislation of trade law in Indonesia that can be described in the following table:

Table 1
Evolution of Wakaf Object Conditions

No.	PP No. 28 Tahun 1977	KHI/Inpres No. 1 Tahun 1991	UU No. 42 / 2002
1.	Wakaf's stuff is still confined to the land.	Wakaf's substance extends to the earth, and besides the earth it moves.	The wholesale coverage includes money, precious metals, valuables, vehicles, charges, rental rights, etc.

Based on the above table, there appears to be an evolutionary-reformist dynamic in Wakaf law in Indonesia. It means there are shift values at the same time as updates in the wakaf. It's seen from the changes of the juridic update over time. It's mainly in the wakaf aspect that's constantly undergoing remarkable upgrades. From the beginning things were confined only to the ground, shifted to wider things and increasingly extended in the era of reformation.

After making a deeper macro-reflection of the Act No. 41 of 2004, there are a number of updated provisions that have occurred in the Wakaf aspect. These provisions can be seen in table 2 below:

Table 2
Modernization of Islamic Law in the Wakaf Law

No.	Islamic Law before updated	Islamic law that has been updated	Set in Article
1	No provisions for the administration of wakaf	Wakaf Registration of Wakaf by PPAIW	32-36
2	Wakaf by mouth and on the basis of faith There is an attempt to certify wakaf	Certification of waqf lands	PP No. 25/2018 Article 51A (2)

3	may not exchange wakaf	Ability to change wakaf	41
4	Nazhir is a local religious figure	Nazhir was a professional job; entitled to reward 10% of wakaf management	10, 12
5	Endowment declaration with specific provisions	endowment declaration with more general provisions	23 (2)
6	Objects wakaf limited to non-moving objects	Object wakaf extended to moving objects	16 (3)
7	Management of what is done as it is	Formation of national wakaf (BWI)	47
8	No criminal and administrative sanctions provisions	There are penal provisions and sanctions administrative	67-68

The table above has given us an interesting legal political phenomenon. Where it appears that the government, through the restriction of power, wants to make a prana named wakaf influence economic values. It means not only personal worship, but more emphasis on the socio-economic dimension of wakaf. In addition, it appears that the government in the context of the legislation (legislation) of the Islamic family law, in the field of wakaf very advanced the approach of gradualization (*tadarruj*) of law.

One interesting note is that wakaf is one of the three legal matters in the KHI that has successfully increased in terms of the legal force, namely from the Presidential Instruction turned into the Law. In other words, the legal matter of marriage and inheritance almost stagnated in the era of reformation.

Besides wakaf, other aspects of the field are zakat and Hajj. The pronouns of Zakat and post-reform Hajj have produced intense political and philosophical twists. It is marked by the birth of 3 laws in the field of Hajj and Zakat. It is the Law No. 17 of 1999 on the maintenance of Haji worship and the Act No. 38 of 1999 about the management of Zakat amended by the Law 23 of 2011. The emergence of this law simultaneously removes the old Zakat law. The three laws are recognized as marking the "harmonic" relationship between the government and the post-New Order Muslims. That is, the legislative cranes that were very tight in the New Order era, became wider in the Reformation era.

The first president of the Reformation era, B.J. Habibie, as the head of the Indonesian Muslim Scientists' Union, seemed to realize the "politization" of Islam that was an integral part of the ICMI's strategy at the time. It is natural that at the beginning of the era of reform many Regulations of the laws were born[26]. ICMI's proximity to Islam is recognized as a driving force for the birth of various Sharia-based laws.

Despite the three laws, they are still in the hands of more professional governance and management. All this is done so that the legal function as a social engineering can be realized. Apparently, through this law, the government's role is quite dominant. As stated in article 3 of the Hajj Act that the government is obliged in the construction, service and protection by providing means, access, security and even comfort in fulfilling Hajj worship. In other words, materially, Zakat in Indonesia still refers to the existing books. Because the Zakat Act – both the Act No. 38 of 1999 and the Law No. 23 of 2011 – still surrounds the management of the zakat an sich. Both laws also show the government's "interest" in maximizing the potential that has not been maximized. With the world's largest population demographic bonus, Indonesia's potential is enormous. The function of zakat to be able to operate optimally requires the involvement of the government in the cultivation of the zakat. This spirit is evident in the provisions on Amil Zakat which were later called Baznas. Its legality is very dominated by the government, both at the national level to the region (Article 15). One interesting note is the existence of an update in the Zakat Act No. 23 of 2011 is the involvement of civil society as part of Amil zakat. Compared to Act No. 38 of 1999 (Article 6) it appears that the management of zakat is largely dominated by the government. This involvement then began to open its "cranes" through the authority to form the UPZ at the regional level and the LAZ involving religious ormas who are obliged to report periodically. It is a form of renewal of the balance of governance between the government as *uli al-amri* with society as a manifestation of public sense involvement. So that the spirit of zakat as an instrument and the prophecy of change from *mustahiq* to *muzakki* can be discouraged.

Even further, the Zakat Act of 2011 has planned the values of progressivity by incorporating the provisions of productive zakat. It is reflected in the aspect of the disclosure of zakat. It is affirmed in article 27 that the zakat may be used for productive endeavors in order to treat the poor and improve the quality of the people. Furthermore, it is said that the publication of zakat for productive endeavors is carried out if the basic needs of *mustahiq* have been met. In the writer's minds, this is a progressive step of the government in applying the spirit of zakat. But this spirit, in the analysis of the author, would feel empty if Amil's role as a distributor did not change. In other words, the *amil* function is not merely to distribute wealth, but rather to be a creative mentor for productive wealth.

[26] Khaidarulloh, "Modernisasi Hukum Keluarga Islam : Studi Terhadap Perkembangan Diskursus Dan Legislasi Usia Perkawinan Di Indonesia" (2014).

Law No. 23 of 2011 has indeed brought about an interesting phenomenon of political-religious conflict. This law was born in the era of President Susilo Bambang Yudhoyono which was officially signed on November 25, 2011 and then officially passed by Ministry Amir Syarifuddin at November 25, 2011. It is well known that the relationship of the President of the Susilo Bambang Yudhoyono at that time, with the Muslims went harmoniously. It is not surprising that in this era, many Sharia-based law products were born.

2. Syariah Aspect of Economic Law

The birth of various Sharia financial institutions marks a new phase in your political dialogue. In other words, your teachings have always been regarded as foreign and tended to become heavier, warmer and more inherent among the economists. Macro, not only in Indonesia, these financial institutions are the main drivers of the birth of the umbrella of economic law based on *mu'amalah* (syari'ah). With the existence of the law will further strengthen the important role of the shari'ah economy in empowering the economy of the people. In the context of Indonesia, precisely 1992 was an early momentum in Islamic economic development. With the establishment of the Muamalat Bank followed by other financial institutions such as the Syrian Bank, from the national level to the regional level, to the smallest micro-institution at the central level. All of this, shows a positive response from my economy in Indonesia.

The above-mentioned realities then encourage the government to affirm the importance of Islamic economy. Philosophically, Islamic economics with its own laws is presented as an anti-thesis to the notions of capitalism and socialism that are oriented only to mere materialism. Your present system is more oriented towards world well-being and *ukhrawi* based on individual and collective justice and prosperity. In this interest, the Indonesian government at the beginning of the leadership of President BJ Habibie passed Act No. 10 of 1998 on Banking. This is done in order to educate the public about the importance of the economic and banking system, including Syari'ah banks. An interesting note contained in the Act No. 10 of 1998 is that it opens wide opportunities for the Syari'ah banking in the movement and implementation of business activities, in the sphere of the Syrian economy. More than that, for conventional banks to open a branch office that specializes in economic activities based on the principles of Sharia.

It is acknowledged that the era of SBY rule was born with such strong Islamic political support. The real implication of this is the political recognition of Islamic law that has succeeded in becoming national law. It was proved in the era of SBY rule that six sharia-based law products were born. This is proved by the birth of the Wakaf Act, Zakat Act, Religious Justice Act which extends its main authority in the economic disputes of the Shariah, SJSN Act, SBSN Act, Halal Product Guarantee Act, and UUPS Act. The six products of the law suggest that the SBY government takes the political

policy of the economic law of the shariah. This policy has been able to present the law as a tool of nation unification. And, at the same time, Islamic law is primarily an economy born out of the womb of religion capable of dialogue with a democracy of a profane nature.

A new round of legal politics has also been filled with legislation in the field of justice that imply your own law. It is known that the birth of the Law No. 3 of 2006 calmed religious justice. This law emerged as a revision of Act No. 7 of 1989. One of the most fundamental things is the expansion of the authority of the PA that does not only refer to the territory of marriage and reference to the law of inheritance *an sich*. Furthermore, the PA through this law has the power to examine, judge and decide against economic disputes of Shariah (Art 49 UU No. 3 2006). This is the reality that then prompted the birth of both formal and material guidelines for PA judges in resolving the economic dispute of Shariah. As a result, in this case, the Supreme Court, as the main judiciary in Indonesia, considers it necessary to formulate legal references for judges.

Through the PERMA was born a reference to the law called Compilation of Shariah Economic Law (KHES) which is Supreme Court Regulation No. 2 of 2008. It is acknowledged that the birth of KHES is an interesting phenomenon in the legislation of Islamic law in Indonesia. Because, inside it is filled with the dimension of renewal. According to N.J. Coulson that updating can be done with one of the codification instruments[27].

Besides, the birth of KHES is also a form of positivization of Islamic law that is a reference and binding. It's different from *fiqih* or *fatwa* that doesn't bind. Born in the reformation era, the SBY era marked the political Islamic relationship of this era so strong. In addition to political factors, economic factors also strengthened the birth of this KHES. The government's focus on strengthening the Sharia-based economy has become a major concern in the midst of a capitalistic system oriented towards pure materialism. This sort of analytical analyst then gives rise to the norms of political base in your own legislation. At the same time, KHES is a legal guide in business transactions based on Sharia principles. This is a new hope for the Muslims as the majority of the Indonesian population. Juridically, the KHES has strengthened Act No. 21 of 2008 on Sharia Banking and Law No. 19 of 2008 concerning Sharia State Securities. KHES consists of 4 books and 796 chapters. Book 1 on the Subjects of Law and Property comprising 3 chapters and 19 articles. Book 2 on Acts comprising 29 Chapters and 655 Articles. For all this time your laws only refer to fatwa fatwa DSN MUI which is jurisprudently less powerful and unbinding. Despite PERMA, the existence of KHES has become a primary reference material for the lawyers at the Religious Court.

[27] Khoiruddin Nasution, "Metode Pembaruan Hukum Islam," 1920.

Although materially many criticisms and shortcomings are embedded in this KHES. Among them is the rule of wickedness which has not been set forth in detail. In addition, there are some provisions that are not accommodated by KHES, such as violations of the law, damages and others. The idea of sanctions and criminal law is not in the KHES, which is the sphere of public law. Besides, from the point of view of the power of the law, KHES is still a PERMA that is less powerful in the positive legal system. Despite this, methodologically, the existence of KHES is sufficient[28].

KHES consists of 4 books and 796 chapters. Book 1 on the Subjects of Law and Property comprising 3 chapters and 19 articles. Book 2 on Acts comprising 29 Chapters and 655 Articles. For all this time your laws only refer to fatwa fatwa DSN MUI which is jurisprudently less powerful and unbinding. Despite PERMA, the existence of KHES has become a primary reference material for the lawyers at the Religious Court[29].

Although materially many criticisms and shortcomings are embedded in this KHES. Among them is the rule of wickedness which has not been set forth in detail. In addition, there are some provisions that are not accommodated by KHES, such as violations of the law, damages and others. The idea of sanctions and criminal law is not in the KHES, which is the sphere of public law. Besides, from the point of view of the power of the law, KHES is still a PERMA that is less powerful in the positive legal system. Despite this methodologically, the existence of KHES is sufficient.

E. Conclusion

The political and legal turmoil in the legislation that took place after the 1999-2020 reforms in Indonesia was very dynamic. One of them starts from the area of the model of the use of omnibus law in the Creation Act which is in line with the theory of Variety and Unity. The Hajj and Umrah laws, the guarantee of the goods of Halal and Sharia banking became variations that became one in the creation of work laws. Ad about 25 chapters of the Haji and Umroh Act and 24 of the Mutu Halal Guarantee Act that are included in the Labour Creation Act. Some changes have led to increased investment and the ease of entrepreneurs to develop Sharia business. Then some legal political foundations were strengthened with judicial review methods in the MK, then the ruling recommended revising the Marriage Act. So the newly emerging Marriage Act involves the four main foundations of the legislation: the philosophical, jurisprudential, political and social foundations. As well as the political spirit in Indonesia also uses the method of sharia deconstruction where there is a law Wakaf and Zakat that is prepared in the acceleration of the legal system that is from the

[28] M Rusydi, "Formalisasi Hukum Ekonomi Islam : Peluang danTantangan (Menyikapi UU No . 3 Tahun 2006)," no. 3 (2006): 1–14.

[29] Abdul Mughits, "Kompilasi Hukum Ekonomi Syari ' Ah (KHES) Dalam Tinjauan Hukum Islam," *Al-Mawarid* XVIII (2008): 141–60.

original textual and consumer nature is reconstructed to the productive direction so that it has more value than in terms of utility to the people.

The transformation of Islamic law in Indonesia in the political context of law has presented a different character and model with the four-founding formula of a law designed by experts. It seems that the economic development factor of the people is the primary basis in the model of post-reform legislation. It is seen from all the fields of *fiqih* that appear to be successful and leading to national law much dominated by considerations and aspects of economic development.

DAFTAR PUSTAKA

Ahmad Gunaryo. *Pergumulan Politik dan Hukum Islam*. Yogyakarta: Pustaka Pelajar, 2006.

Ainun Najib. "Legislasi Hukum Islam Dalam Sistem Hukum Nasional." *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 4, no. 2 (2020): 116–26. https://doi.org/10.35316/istidlal.v4i2.267.

Assyaukanie, Luthfi. "Religion as a Political Tool Secular and Islamist Roles in Indonesian Elections." *Journal of Indonesian Islam* 13, no. 2 (2019): 454–79. https://doi.org/10.15642/JIIS.2019.13.2.454-479.

Budi, I.S., and S. Harsono. "THE EFFECT OF BRAND IMAGE AND PRODUCT ON CUSTOMER SATISFACTION AND WILLINGNESS TO PAY AT COFFEE BEAN SURABAYA." *Russian Journal of Agricultural and Socio-Economic Sciences* 73, no. 1 (2018): 146–54. https://doi.org/10.18551/rjoas.2018-01.19.

Daniel S. Lev. *Hukum Dan Politik Di Indonesia*. Jakarta: LP3ES, 1990.

Eti Rimawati, SA Nugraheni. "METODE PENDIDIKAN SEKS USIA DINI DI INDONESIA." *Jurnal Kesehatan Masyarakat Andalas*, 2019.

Fanani, Muhyar. *Metode Studi Islam; Aplikasi Sosiologi Pengetahuan Sebagai Cara Pandang*. Pustaka Pelajar, 2010.

Halimatusa'diyah, M. Zaki Mubarak dan Lim. *Politik Syariat Islam: Ideologi Dan Pragmatisme*. Jakarta: Pustaka LP3ES, 2014.

Itmam, M. Shohibul. *Positivisasi Hukum Islam Di Indonesia*. Ponorogo: STAIN Po-Press, 2016.

Khaidarulloh. "Modernisasi Hukum Keluarga Islam : Studi Terhadap Perkembangan Diskursus Dan Legislasi Usia Perkawinan Di Indonesia," 2014.

Maksum, Muhammad. "Politik Hukum Ekonomi Islam Di Indonesia." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 13, no. 02 (2018): 1–14. https://doi.org/10.30631/al-risalah.v13i02.416.

Minhaji, Akh. *"Hukum Islam: Antara Profanitas Dan Sakralitas, Perspektif Sejarah Sosial."* Yogyakarta: UIN Sunan Kalijaga, 2004.

Moh. Mahfud MD. *Membangun Politik Hukum, Menegakkan Konstitusi*. Jakarta: LP3ES, 2006.

———. *Politik Hukum Di Indonesia*. (Edisi Rev. Jakarta: Rajawali Pers, 2009.

Mughits, Abdul. "Kompilasi Hukum Ekonomi Syari ' Ah (KHES) Dalam Tinjauan Hukum Islam." *Al-Mawarid* XVIII (2008): 141–60.

Mujiyono Abdillah. *Dialektika Hukum Islam Dan Perubahan Sosial*. Surakarta: Universitas Muhammadiyah Surakarta, 2003.

Munawwir, Achmad Warson. *Kamus Al-Munawwîr Versi Indonesia-Arab*. Cet I. Surabaya: Pustaka Progressif, 2007.

Muslihun, Muslihun. "Dinamisasi Hukum Islam Di Indonesia Pada Zakat Produktif Dan Wakaf Produktif: Sebuah Studi Perbandingan." *Al-Manahij: Jurnal Kajian Hukum Islam* 8, no. 2 (1970): 199–216. https://doi.org/10.24090/mnh.v8i2.408.

Muzadi, Hasyim. *Nahdatul Ulama Di Tengah Agenda Persoalan Bangsa,*. Cet. 1. Jakarta: Logos Wacana IlmU, 1999.

Nasution, Khoiruddin. "Metode Pembaruan Hukum Islam," 1920.

Nurrohman, Nurrohman. "Hukum Islam Di Era Demikrasi: Tantangan Dan Peluang Bagi Formalisasi Politik Syariat Islam Di Indonesia." *Addin* 9, no. 1 (2015): 161–80.

Rahadjo, Satjipto. *Sosiologi Hukum, Perkembangan, Metode Dan Pilihan Masalah*. Surakarta: Muhammadiyah University Press, 2002.

Ritzer, George. *Sosiologi Ilmu Pengetahuan Berparadigmaaa Ganda*. Jakarta: Raja Grafindo Persada, 2003.

Rusydi, M. "Formalisasi Hukum Ekonomi Islam : Peluang danTantangan (Menyikapi UU No . 3 Tahun 2006)," no. 3 (2006): 1–14.

Safa'at, Muchamad Ali. *Dinamika Negara Dan Islam: Dalam Perkembangan Hukum Dan Politik Di Indonesia*. Jakarta: Konstitusi Press, 2018.

Soekanto, Soerjono. *Penegakan Hukum*. Jakarta: RajaGrafindo Persada, 1983.

Sonafist, H. Y., Yasni Efyanti, Ramlah, Ali Hamzah, and Faizin. "Ibn Al-Muqaffa's Proposal for Taqnīn and Its Synchronization with Islamic Law Codification in Indonesia." *Samarah*, 2020. https://doi.org/10.22373/sjhk.v4i2.7864.

Zahrah, Muhammad Abu. *Al-Islām Wa Taqnīn al-Ahkām*, 1997.