Muchamad Ali Safa'at

Indonesian Securities
On the Influence of the State-Islam Relationship on Legal and Political Developments

UNIVERSITÄT LEIPZIG   **DFG** Deutsche Forschungsgemeinschaft

Contents

Indonesian Secularities
On the Influence of the State-Islam Relationship on Legal and Political Developments

Abstract: This article aims to analyse the relationship between state and religion (in this case, Islam) in political and legal developments in Indonesia from colonial times to the present, and to determine the model of Indonesian secularity within the multiple secularities approach. The legal and political developments relating to the relationship between the state and Islam in Indonesia are understood to be the products of societal debate as well as instruments for solving particular societal problems, guided by certain guiding ideas[1] that shape Indonesian secularity.

The paper first describes Indonesia's evolving socio-political conditions, noting in particular the emergence of two distinct groups: Islamic groups calling for Islam to be made the foundation of the Indonesian state and for Islamic law to be enforced for Muslims in Indonesia, and nationalist groups that support the idea of a secular nation-state based on Pancasila, a set of five founding principles. In the second part, the paper outlines the development of Pancasila as a national agreement and state ideology. The third part analyses the state's legal policy on Islamic law. The fourth part analyses the relationship between the character of the contemporaneous regime and its attitude towards the aspirations of Islamic law. The fifth part analyses some state laws in Indonesia that relate to Islamic law in order to establish whether they constitute a legalisation of Islamic law and to what end the laws were created.

The sixth part determines the model of Indonesian secularity based on the societal problems to be solved by the legal and political developments and the guiding ideas referred to. The final part defines the general boundaries between the state and Islam.

---

1   Monika Wohlrab-Sahr and Marian Burchardt, "Multiple Secularities: Toward a Cultural Sociology of Secular Modernities," *Comparative Sociology* 11, 6 (2012): 887.

Introduction

In all countries, historical and socio-cultural factors influence the patterns of state-religion relationships. Even when they have been constitutionally institutionalised, relationships are dynamic and fluid.[2] There are three paradigms of state-religion relationships: integralistic, symbiotic, and secularist.[3] These paradigms are the bases for different state models, namely the secular state, religious state, and a state that is not a religious state but does not strictly separate between state and religious affairs.

The relations between state and religion from the point of view of Islam also vary. These differences do not merely stem from the interpretation of religious teachings, but are also a result of the historical and social realities of each country.[4] In Indonesia, there are at least three positions: secularist, traditionalist, and reformist.[5] Secularists restrict Islam as a religion to the regulation of the relationship between humans and God, not involving it in the regulation of public or state affairs. In this view, the state is entirely under man's authority and is distinct from religion; politics becomes a public secular affair, whereas religion is understood as a private affair.[6]

Traditionalists[7] believe that Islam is an all-encompassing religion, regulating all aspects of human life including the state system (*al-Islam din wa daulah*). Since Muslims are supposed to follow the law and principles of Islam, they are required to establish an Islamic state that totally adopts

---

2   Natalie Goldstein, *Global Issues: Religion and the State* (New York: Facts on File, Inc., 2010), 6–7.

3   Rahmatunnair, "Paradigma Formalisasi Hukum Islam di Indonesia," *Jurnal Ahkam* XII, no. 1 (2012): 101.

4   Abdul Salam Arief, "Relasi Agama dan Negara Dalam Perspektif Islam," *Herméneia* 2, no. 2 (2003): 279.

5   Siti Musdah Mulia, "Menuju Kebebasan Beragama di Indoneisa," in *Kebebasan Beragama Atau Berkepercayaan Di Indonesia,* ed. Chandra Setiawan and Asep Mulyana (Jakarta: Komnas HAM, 2006), 41.

6   Mulia, "Menuju Kebebasan Beragama di Indoneisa," 41.

7   Hefner describes the traditionalists' stance as 'statist Islam'. Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (New Jersey: Princeton University Press, 2000), 218. In the present article, this group will be called the Islamist group. This group wants Islam as the state foundation and fights for the formalisation of Islamic law as state law. This group is rooted in two Islamic movements, namely *Al-Ikhwan al-Muslimun* and *Jamaat-i-Islami*. See Masdar Hilmy, *Islamism and Democracy in Indonesia: Piety and Pragmatism* (Singapore: Institute of Southeast Asian Studies, 2010), 6.

Sharia law[8] with regard to both family law (*al-ahwalal-syakhsiyah*) and criminal law (*hudud*).[9]

Reformists' ideas differ from those of both secularists and traditionalists. Reformists argue that Islam is a religion that provides absolute regulations regarding man's relationship with God, but only basic principles when it comes to society. As such, reformists argue that there is space for human beings to establish their own law on social behaviour and relationships.[10]

Mirjam Künkler outlines three characteristics of the dynamics of the relationship between the state and Islam in Indonesia. First, although constitutional constructions are key to state-religion relations, extra-

---

8 The concepts of Sharia, Islamic law, and Islamic teachings often blur. Sharia is the teaching of Islam covering all aspects of human life, namely morals, laws, beliefs, and attitudes. Islamic law is part of Sharia and often also called *fiqh*. Sharia is different from *fiqh*. Sharia is created by Allah (and Rasulullah) and is universal and valid throughout the ages. *Fiqh* is the result of humanity's understanding and interpretation of Sharia as contained in the Qur'an and Sunnah when confronted with human behaviour. Therefore, *fiqh* is based on Sharia. Sharia is implemented through *fiqh*, which consists of scholars' understanding of Sharia. However, the term Sharia is often used to refer to the legal and *fiqh* aspects. The phrase "application of Sharia" is used to refer to the application of Islamic law or *fiqh*. See, Muhammad Zuhri, *Hukum Islam dalam Lintasan Sejarah* (Jakarta: PT RajaGrafindo Persada, 1996), 1–5; Joko Mirwan Muslimin, *Islamic Law and Social Change: A Comparative Study of the Institutionalization and Codification of Islamic Family in the Nation-States Egypt and Indonesia (1950–1995)*, Dissertation thesis Hamburg University (Hamburg, 2005), 3.

Husein Muhammad writes that Islam is *din*, Sharia *(al-syari'ah)*, and morals. *Din* is belief in God Almighty and eschatological life. Sharia is the way or rule of life. Morals are ethics or *akhlaq*. *Al-Din* and *al-akhlaq* are universal. Sharia is contextual and diverse. See, K. H. Husein Muhammad, "Hukum Islam yang Tetap dan Yang Berubah," in *Islam Nusantara: dari Ushul Fiqh Hingga Konsep Historis*, ed. Akhmad Sahal and Munawir Azis (Bandung: Mizan, 2016), 98.

Adnan Qohar argues that the term "Islamic law" is a typical Indonesian term and a translation of *al-fiqh al-Islaami* or in some contexts, a translation of *al-syarii'a al-Islaami*. In the Qur'an, the term Islamic law *(al-hukm al-Islaami)* cannot be found, but the term Sharia can be. In Indonesia, "Islamic law" refers to the rules derived from revelation that are formulated into four legal forms, namely *fiqh*, fatwas, court decisions, and state laws. See Adnan Qohar, "Bingkai Rasionalisasi Pembaruan Hukum Islam Indonesia tentang Kedudukan Perempuan," in *Menggugat Stagnasi Pembaruan Hukum Islam di Indonesia*, ed. M. Sutomo and Ahmad Zaenal Fanani (Jakarta: UII Press, 2016), 258.

In An-Naim's view, Sharia is always a product of *ijtihad* since it is based on human understanding of the Qur'an and Sunnah through a process of reasoning and reflection. Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge: Harvard University Press, 2008), 13.

9 Mulia, "Menuju Kebebasan Beragama di Indoneisa," 41.

10 Mulia, 41. Joko Mirwan Muslimin, *Islamic Law and Social Change*, 16.

constitutional politics play a significant role over time. Künkler notes that "constitutional moments" define religion-state relations, but "normal politics" leave much room for manoeuvre. Second, colonial legacies of law have established a relationship between the state and religion. In Indonesia, the secularisation and standardisation of criminal law under the Dutch colonial government moved the country away from the possibility of Islamic public law. Additionally, the Japanese occupation regime provided the administrative basis for today's state-religion arrangements with the establishment of the Ministry of Religious Affairs. Third, there is a view that Pancasila's flexibility (so-called "constitutional ambiguity") is an attempt to avoid a decision on the controversial issue of the status of Islam within the state. However, the rejection of the provision that Islamic law would apply to all Muslims in the final version of the 1945 Constitution is actually a commitment to the nation-state.[11]

Socio-political Dynamics

Indonesian society has long been diverse, both from an ethnic and a religious perspective. Originally, the many local ethnic groups in Indonesia adhered to belief systems that can be subsumed under animism.[12] The establishment of Hinduism and Buddhism from the 3rd century BCE did not change this diversity because these religions did not displace the old beliefs, but instead widened the religious landscape with the emergence of syncretist beliefs. When Hinduism and Buddhism became the dominant religions of the pre-colonial kingdoms on the Indonesian archipelago, every kingdom developed different regulations and structures concerning royal affairs and religious affairs.[13]

Islam arrived in Indonesia peacefully through two different processes. First, through trade channels from India and Persia, whose mystical Islam

---

11 Mirjam Künkler, "Constitutionalism, Islamic Law, and Religious Freedom in Postindependence Indonesia," in *Constitution Writing, Religion and Democracy,* ed. Asli Ü. Bali and Hanna Lerner (Cambridge: Cambridge University Press, 2017), 180–81.

12 Tedi Kholiludin and Kuasa Negara Atas Agama*, Politik Pengakuan, Diskursus "Agama Resmi", dan Diskriminasi Hak Sipil* (Jakarta: RaSAIL Media Group, 2009), 136.

13 Harry J. Benda, Bulan Sabit, and Matahari Terbit, *The Crescent and the Rising Sun, Indonesian Islam under the Japanese Occupation, 1942–1945* (Jakarta: Pustaka Jaya, 1980), 27.

easily acculturated to animism, Hinduism, and Buddhism.[14] As a result, in the 14th and 15th centuries, Islam became the official religion of the pre-colonial Indonesian kingdoms,[15] which developed diverse, pluricentric social orders.[16] Second, Islam's relevance in Indonesia grew as a result of direct influence from Mecca through Indonesian *hajj* pilgrims, of whom there were more and more in the 19th century. In this phase, Islam aimed particularly to purify worship and put an end to syncretist beliefs.[17]

The peaceful development of Islam generated different interpretations of and levels of commitment to Islam that influenced the formation of Indonesia's social structure, which Geertz later classified into three groups: *abangan*, *priyayi*, and *santri*.[18] Within the political realm, this classification has its equivalents in the nationalist and the Islamist groups.[19] *Abangan* and *priyayi* become the nationalist group whereas *santri* become the Islamist group. The nationalist group developed within both the *Budi Oetomo* organisation (established in 1908) and the *Indonesian Association of the Netherlands*, which from 1924 began to determine that the goal of independence should be based on four principles, namely national unity, solidarity, non-cooperation between religion and state, and independence. The nationalist group supported the idea of separation of religion and state. Religion was regarded as a spiritual and personal affair, while the state was seen as a matter of the world and society. The state had neither authority to organise, nor to impose religion on its citizens.

---

14 Nurcholish Madjid, *Tradisi Islam: Peran dan Fungsinya dalam Pembangunan di Indonesia* (Jakarta: Paramadina, 1997), 7.

15 See Ernst Utrecht, "Religion and Social Protest in Indonesia," *Social Compass* XXV, no. 3–4 (1978): 397.

16 Hefner, *Civil Islam: Muslims and Democratization in Indonesia*, 14.

17 Gavin W. Jones, "Religion and Education in Indonesia," *Indonesia* 22 (1976): 21. The number of Indonesian pilgrims had increased since 1858. Indonesia's growing middle class – a result of the Dutch plantation system (*cultuurstelsel*) – gained the wealth needed to undertake the pilgrimage and changes in regulations also made performing the *hajj* easier. See M.C. Ricklefs, "Religion, Politics and Social Dynamics in Java: Historical and Contemporary Rhymes," in *Expressing Islam: Religious Life and Politics in Indonesia*, ed. Greg Fealy and Sally White (Singapore: Institute of Sotheast Studies, 2008), 116–17.

18 *Abangan* and *priyayi* groups in Java mostly identify themselves as Muslims despite not practising Islamic teachings. They are often referred to as "statistical Muslims" or "nominal Muslims". They choose Islam because it is the most powerful religion in Java. See Joseph Tamney, "Modernization and Religious Purification: Islam in Indonesia," *Review of Religious Research* 22, no. 2 (1980): 210; Utrecht, "Religion and Social Protest in Indonesia," 396.

19 Deliar Noer, *Gerakan Modern Islam di Indonesia 1900–1942* (Jakarta: LP3ES, 1980), vii.

The Islamist group (mostly identical to *santri*) is comprised of two different Muslim groups, namely the traditionalist group and the modernist group.[20] The traditionalist group was rooted in the Javanese Islamic tradition; its main organisation was the *Nahdlatul Ulama* (NU).[21] The modernist Islamic group consisted mainly of urban, middle-class Muslims who had received a modern education. Their primary organisation is still the *Muhammadiyah*.[22]

Indonesia's pre-colonial kingdoms ended with the establishment of Dutch colonial rule in the 19th century. The Dutch implemented a policy of excluding religion from politics[23] based on the argument that Islam could not play a constructive role in modernising Indonesian society. The policy also aimed to contain the political danger of Pan-Islamism. The Dutch policy was directed toward modernisation, secularisation, and Westernisation by limiting religion through customary institutions and the Western model of education.[24]

Islam became an essential part of Indonesian identity and a powerful resource for indigenous resistance against the Christian Western colonists.[25] Islam evolved into a political identity that dispelled local patriotism and created national unity,[26] culminating in the formation of the *Sarekat*

---

20 Ricklefs classifies the pious Muslim community into different groups, i.e. sharia-oriented reformers, Sufi reformers, adherents of the mystic synthesis, rural kiai, and followers of the messianic movement. See Ricklefs, "Religion, Politics and Social Dynamics in Java," 117.

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

22 R. William Liddle, "The Islamic Turn in Indonesia: A Political Explanation," *Journal of Asian Studies* 55, no. 3 (1996): 622–23. *Muhammadiyah* was also influenced by the Pan-Islamic movement introduced by Jamaluddin al-Afghani, Muhammad Abduh, and Rasyid Ridha. Muslimin, *Islamic Law and Social Change*, 34; Greg Barton, "Indonesia: Legitimacy, Secular Democracy, and Islam," *Politics & Policy* 38, no. 3 (2010): 481.

23 Kholiludin, *Kuasa Negara Atas Agama*, 141–42.

24 Dietrich Jung, "'Islam as a Problem': Dutch Religious Politics in the East Indies," *Review of Religious Research* 51, no. 3 (2010): 293–94.

25 Utrecht, "Religion and Social Protest in Indonesia," 409. Islam as an identity in the fight against colonialism was influenced by the Pan-Islamism movement that arrived in Indonesia through *hajj* pilgrims and the publications of reform groups, such as *al- 'Urwah al-Wutqa*, *al-Manar*, and the local magazine *al-Munir*, which was published in West Sumatra. Muslimin, *Islamic Law and Social Change*, 38.

26 Amry Vandenbosch, "Nationalism and Religion in Indonesia," *Far Eastern Survey* 21, no. 18 (1952): 182.

Islam (SI)[27] as a political organisation, as well as the *Muhammadiyah* and NU within the social sphere.

Both the nationalists and the Islamists rejected colonialism and fought for independence, although according to Benda, they have never been able to create a permanent coalition.[28] From the emergence of the idea of an independent Indonesia, there were different opinions on the future state's ideological foundation and thus on the relationship between the state and religion. While the nationalists favoured a secular nation-state, the Islamists wanted an Islamic state or at least Islam as the state's ideological foundation. This debate was conducted in the mass media towards the end of Dutch colonial rule and during the Japanese occupation.[29]

The debate on the state's ideological foundation continued formally within the *Preparation Agency for the Independence of Indonesia* (BPUPKI). The BPUPKI meetings were conducted in two periods, from 28 May to 1 June 1945 and from 10 to 17 July 1945. The Islamists – lead by Ki Bagus Hadikusumo, K. H. Ahmad Sanusi, Kahar Muzakir, and K. H. A. Wachid Hasyim – not only proposed Islam as the state's foundation and official religion, but also proposed that the state should be obliged to enforce Sharia law and that the president should be Muslim. The nationalist group proposed that the principles of nationalism, unity of Indonesia, kinship, democracy, just and civilised humanity, and divinity without mentioning a particular religion, should be the state's foundational principles. Their leading figures were Radjiman, Sukarno, Muhammad Hatta, Supomo, Muhammad Yamin, Wongsonegoro, Sartono, Suroso, and Buntaran Martoatmojo.[30]

In his speech to the BPUPKI on 1 June 1945 summarising the results of the meetings thus far, Sukarno outlined five basic principles as foundational for future Indonesia: (1) Indonesian nationalism, (2) internationalism and humanity, (3) consensus within democracy, (4) social welfare, and

---

27 Founded in Solo on 11 November 1912, *Sarekat Islam* grew from *Sarekat Dagang Islam* (Islamic Trade Union), which was founded on 16 October 1905. Noer, *Gerakan Modern Islam di Indonesia 1900–1942*, 115. The organisation not only changed its name but also shifted its focus from economic to political affairs. Ahmad Syafii Maarif, *Studi tentang Percaturan dalam Konstituante: Islam dan Masalah Keagamaan* (Jakarta: LP3ES, 1985), 79; Hilmy, *Islamism and Democracy in Indonesia: Piety and Pragmatism,* 70.
28 Bulan Sabit Benda and Matahari Terbit, *The Crescent and the Rising Sun, 1942–1945*, 67–68.
29 Budiyono, "Hubungan Negara dan Agama Dalam Negara Pancasila," *Fiat Justicia* 8, no. 3 (2014): 419.
30 Maarif, *Studi tentang Percaturan dalam Konstituante*, 103.

(5) divinity. Putting nationalism first in this list indicated that Indonesia should become a nation-state.[31] The divinity principle was the result of an understanding of Indonesian society as a religious one and was a tribute to the diversity of Indonesia's religions. Sukarno's speech, entitled "The Birth of Pancasila", was the first time that the state's foundational principles were called *Pancasila*, a combination of two old Javanese words, deriving from Sanskrit: *pañca* (five) and *sīla* (bases, principles).[32]

After controversial discussions among the BPUPKI members in the first session in May 1945, a smaller committee – consisting of Sukarno, Muhammad Hatta, Agus Salim, A. A. Maramis, Muhammad Yamin, K. H. A. Wahid Hasyim, A. Subardjo, R. Abikoesno, and A. Kahar Muzakar – was established.[33] This *Committee of Nine* formulated the Jakarta Charter, the Indonesian declaration of independence, which contains the state's philosophical foundation. The Jakarta Charter was a compromise between the nationalists and the Islamists. The divinity principle was now put first and contained an explicit reference to Islam: "Belief in God, with the obligation to implement the Sharia of Islam for its adherents."[34] This phrasing would have made Indonesia an Islamic nation-state that was obliged to ensure that Muslims implemented Sharia law. The Pancasila now included the following principles:

(1) Principle of divinity (*Ketuhanan Yang Maha Esa*)
(2) Humanism/internationalism(*Kemanusian/Internationalisme*)
(3) National unity (*Persatuan Indonesia*)
(4) Democracy (*Permusyawaratan/perwakilan*)
(5) Social justice (*Keadilan Sosial*)

On the day after independence, 18 August 1945, the *Committee for the Preparation of Indonesian Independence* (PPKI) promulgated the 1945 Constitution with the Jakarta charter as its preamble. In spite of the previous

---

31 I. Wangsa Widjaja and Meutia F. Swasono, *Mohammad Hatta: Kumpulan Pidato II* (Jakarta: Inti Idayu Press, 1983), 194.

32 See Sukarno's speech to the BPUPKI on 1 June 1945. RM. A.B. Kusuma, *Lahirnya Undang-Undang Dasar 1945* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2009), 300.

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

34 Muhammad Yamin named the document the 'Jakarta Charter' (*Piagam Jakarta*). Sukarno, as Chair of the *Committee of Nine*, called it the 'Mukaddimah', while Soekiman called it the *'gentlemen's agreement'*. Kusuma, *Lahirnya Undang-Undang Dasar 1945*, 472. See also H. Endang Saifuddin Anshari, M.A., *Piagam Jakarta 22 Juni 1945* (Jakarta: Rajawali, 1986), 32.

heated debates and the laborious work to reach a compromise on the formulation of the Pancasila, this version of the Jakarta Charter contained a fundamental change: The first sila had been changed from "Belief in God, with the obligation to implement the Sharia of Islam for its adherents" to "Belief in the one Almighty God", omitting the Sharia part. The intention of the change of this first principle was to accommodate non-Muslim groups' objections, especially from the Christian groups of Eastern Indonesia who threatened to secede from the new independent State of Indonesia. In addition to omitting the phrase "with the obligation to implement the Sharia of Islam for its adherents" from the first principle of Pancasila, Muhammad Hatta also conveyed the amendment of the "Muslim" requirement for the President in Article 6 paragraph (1), and the change of Article 29 paragraph (1).[35] However, the Indonesian 1945 Constitution does not mention the word 'Islam' at all.

Some Muslim groups still consider the change in the Jakarta Charter to be a betrayal. They belive that the omitting of the Sharia phrase from the Pancasila's first principle is influenced by the pressure from non-Muslim groups. It should also be noted that Islamist groups only accepted the change because Sukarno promised them that the constitution was preliminary and they would have the opportunity to strive for Islam to be named the state's foundation in the new constitution. The new constitution was to be passed by the still to be elected Indonesian parliament, the *People's Consultative Assembly* (MPR).[36] In 1955, the MPR established a *Constitutional Assembly* in order to renegotiate the relations between state and religion and revise the 1945 Constitution. Since the *Constitutional Assembly* could not agree on the matter of the religious foundation of the Indonesian state, it was ultimately dissolved by President Sukarno with the Decree of 5 July 1959. Sukarno then re-enacted the 1945 Constitution.

Indonesia's socio-political conditions during Sukarno's period of office (disparagingly dubbed the 'Old Order' by his successor Suharto) continued to reflect the differences between Islamist and nationalist groups. Islamists were affiliated with Muslim parties, especially *Masyumi*. *Masyumi* was founded in November 1945, and supported by both traditionalist and

---

35 Muhamad Hisyam, "Ki Bagus Hadikusumo dan Problem Relasi Agama – Negara," *Jurnal Masyarakat dan Budaya* 13, no. 2 (2011): 22.

36 Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pacific Rim Law & Policy Journal* 19, no. 2 (2010): 282; Faisal Ismail, *Panorama Sejarah Islam dan Politik di Indonesia: Sebuah Studi Komprehensif* (Jakarta: IRCiSoD, 2017), 66–67.

modernist Islamic groups in Indonesia. Due to its federal character, it was able to integrate all Islamic political streams, but, for the same reason, was always weak and threatened in its unity. Traditionalist groups (NU) and modernist groups (*Persis* and *Muhammadiyah*) often had different views and interests with the result that the NU ultimately declared its separation from *Masyumi* and became an independent political party in 1952.[37] The nationalist group was affiliated with nationalist and socialist parties, especially the *Indonesian Nationalist Party* (PNI) and the *Indonesian Communist Party* (PKI).[38] In addition, there were several smaller nationalist and religious parties, such as the *People's Consultative Party* (*Murba*), the *Muslim Association Party* (PSII), and the *Indonesian Christian Party* (*Parkindo*).

In the 1955 election, the power of the Islamist and nationalist groups was relatively balanced.[39] The nationalist camp (PNI, PKI, *Parkindo*, *Catholic Party*, PSI[40], and IPKI[41]) won 253 seats (52.8% of the votes) and the Islamist group (*Masyumi*, NU, PSSI, and *Perti*) gained 226 seats (47.2%).[42] In the years after the failure and dissolution of the *Constitutional Assembly* in 1959, the tensions between Islamist, nationalist and communist groups increased dramatically: Islamists were opposed to communist groups,[43] who were closer to the nationalist groups. The Islamists became closer to the military,[44] which began to enter the political arena and gained strength as civil society powers were weakened by the political conflicts.[45] The communist group opposed the military elite.

---

37   Muslimin, *Islamic Law and Social Change*, 116; Barton, "Indonesia: Legitimacy, Secular Democracy, and Islam," 480.

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

39   Muchamad Ali Safa'at, *Pembubaran Partai Politik: Pengaturan dan Praktik Pembubaran Partai Politik Dalam Pergulatan Republik* (Jakarta: Rajawali Pers, 2011), 137.

40   Indonesia Socialist Party.

41   The Indonesia Independent Fighter Association.

42   Miriam Budiardjo, *Partisipasi dan Partai Politik: Sebuah Bunga Rampai* (Jakarta: Yayasan Obor Indonesia, 1998), 234 and 256.

43   The conflict between *santri* and communist *abangan* was mainly rooted in the PKI's land reform campaign and culminated in the PKI rebellion in Madiun in 1948. See Ricklefs, "Religion, Politics and Social Dynamics in Java," 121–22.

44   In this period, the military were participant-rulers who shared power with the president while confronting the rising influence of the communist movement. Marcus Mietsner, *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation* (Singapore: Institute of Southeast Asian Studies, 2009), 13.

45   Marcus Mietzner, "Veto Player No More? The Declining Political Influence of the Mil-

Within the Islamic camp, a process of radicalisation took place, during which the more modernist *Masyumi* intensified contact with *Darul Islam*, a rather radical Islamist group that wanted to establish an Islamic state. *Darul Islam* had founded the *Islamic State of Indonesia* (NII) in 1948 in West Java. In 1960, the NII was involved in the armed *PRRI and Permesta Rebellion* against the central government's policy towards indigenous groups in East and West Indonesia.[46] After the government had crushed the rebellion, the President's Decree Number 200 of 1960 dissolved *Masyumi* on 17 August 1960, deeming it an NII collaborator. This was the beginning of the decline of Islamist political power in Indonesia.

Following the dissolution of *Masyumi* and the declining role of political parties in general in the first half of the 1960s, there were only three major political powers left in Indonesia: the *Communist Party* (PKI), the military, and President Sukarno himself.[47] The acme of the conflict between the PKI and the army was the abduction and killing of six army generals in the early hours of 1 October 1965.[48] This became known as the *Thirtieth of September Movement* (G30S).[49] Although there is still scholarly and political debate both within and outside Indonesia regarding who masterminded the killings, both the army and religious groups accused the PKI of being responsible for and involved in this attempted coup d'état. General Suharto subsequently conducted a campaign to purge Indonesian society of the PKI. Around half a million members and sympathisers of the PKI were killed by the army, countless were arrested. This marked the end of the

---

itary in Postauthoritarian Indonesia," in *Democracy and Islam in Indonesia*, ed. Mirjam Künkler and Alfred Stepan (New York: Columbia University Press, 2013), 92–93.

46 Vandenbosch, "Nationalism and Religion in Indonesia," 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.

47 According to Alfian, the rise of the military as a political force was due to the loss of political parties balancing against the PKI. Alfian argues that the PKI needed Sukarno to protect its political activities while the military needed Sukarno to legitimise its political function. Sukarno needed the PKI to counterbalance the military and needed the military to support his guided democracy. See, Alfian, *Pemikiran Dan Perubahan Politik Indonesia* (Jakarta: PT. Gramedia Pustaka Utama, 1992), 40–41.

48 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.

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

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. In the course of the PKI purge, both traditionalist and modernist Muslims engaged with the military, driven by long-standing conflicts with the PKI and the hope of regaining Islamist political power in a new era.[50] Following the suppression of the coup d'état and the military massacres of (supposed) communists, General Suharto thus led the traditionally conservative armed forces in a successful coup against President Sukarno.

Suharto called his regime the 'New Order', claiming that he would implement Pancasila and the 1945 Constitution in a pure and consequent manner. While the New Order was marked by mass de-politicisation and enforced ideological hegemony, it also provided socio-political and economic stability through state corporatism. State politics affected almost every aspect of people's lives, including their religious lives.[51] Public religious activities were suppressed systematically and there was an attempt to restrict religion exclusively to the private realm. Though worship in the public sphere was still permitted, it had to be on the state's terms. Furthermore, the activities of religious organisations were strictly limited to the social sphere and excluded from the political arena.[52] Islamists initially hoped for a greater political role under the New Order in return for having supported the military in defeating communism.[53] However, these hopes were disappointed and Muslim organisations were also suppressed and marginalised. The military distrusted Islamists in light of their involvement in the *PRRI and Permesta Rebellions* in 1960, as they had betrayed two main principles of the national political identity, namely multireligiosity and territorial integrity.[54]

The removal of ideology from political party policies and the establishment of Pancasila as the sole principle of all political parties resulted in a simplification of Indonesia's political landscape under President Suharto.

---

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

51 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.

52 Syafiq Hasyim, *State and Religion: Considering Indonesian Islam as Model of Democratisation for the Muslim World* (Berlin: Liberales Institut, 2013), 17.

53 Muslim groups primarily became involved for political and economic reasons rather than religious ones. Törnquist, "Muslim Politics and Democracy" 8.

54 Liddle, "The Islamic Turn in Indonesia," 621.

Only three parties remained: the ruling *Golkar*[55]; the *United Development Party* (PPP), which was the result of a merger of several Islamic parties; and the *Indonesian Democratic Party* (PDI), which was the result of a merger of several nationalist parties.[56]

Suharto pursued a kind of political secularisation in different ways. In addition to the suppression of public religious activities, and restrictions on the political participation of parties with religious foundations, *Golkar* also tried to abandon religion symbolically. For example, the PPP was made to replace its symbol – an image of the Kaaba – with the symbol of Pancasila, a star. Gradually, the PPP's Muslim foundations were to be weakened and the party itself turned into a party with a national ideology and symbol, namely Pancasila.[57] The change in the PPP's principles and symbol deprived the party of its identity as an Islamic party, meaning the distinction between Islamist and nationalist parties no longer applied. *Golkar* established various peripheral organisations to accommodate Islamic groups, including the *Indonesian Mosque Council* and the *Islamic Communication Forum of Islamic Organisations*.[58] The *Indonesian Democratic Party* (PDI) pursued the same strategy and founded an Islamic wing called *Baitul Muslimin Indonesia* (BMI).

This renewed transformation of the political landscape was paralleled by an ideological change within the Muslim communities, which no longer perceived religion as the sole determining factor when making political choices. The NU and *Muhammadiyah* distanced themselves and no longer participated in politics. In the 1977 election, the NU was still part of the PPP but in 1984 reverted to their original identity, i.e. as a social organisation which was not involved in practical and electoral politics.[59] Consequently, members of the NU and *Muhammadiyah* were free to make their political choice without being directed to affiliate with certain political parties.

---

55 *Golkar* was originally set up by Sukarno as an organisation to unify people from a number of occupational and other groups in Indonesian society. Sukarno's intention was to replace the role of political parties, which in his view caused social disintegration. In the New Order era, *Golkar* became a functional group, which was used by the state and the military to intervene in the political arena. Utrecht, "Religion and Social Protest in Indonesia," 405; Liddle, "The Islamic Turn in Indonesia," 627.

56 Daniel Dhakidae, "Pemilihan Umum di Indonesia: Saksi Pasang Naik dan Surut Partai Politik," *Prisma*, no. 9 (1981): 34.

57 Hasyim, *State and Religion: Considering Indonesian Islam as Model of Democratisation for the Muslim World*, 20–21.

58 Künkler, "Constitutionalism, Islamic Law, and Religious Freedom," 199.

59 Bush, *Nahdlatul Ulama and the Struggle for Power within Islam and Politics in Indonesia*, 2 and 67.

Under ongoing pressure from the New Order, the Muslim community divided into two groups, neither of which were fiercely opposed to state policy. Both groups engaged in social activities with different strategies and objectives. The first group conducted missionary endeavours (*da'wah*) by maintaining the idea of an Islamic state, and, among other things, by establishing the *Council of Islamic Da'wah Indonesia* (DDII), led by Mohammad Natsir, in 1967, and the *Indonesian Ulama Council* (MUI), in 1975.[60] Due to state pressure, extremist religious movements were forced to shift to underground activities.[61]

The second group consisted mainly of younger Muslims with modern educational backgrounds. This group supported the civil-democratic Islamic reform movement. It was not linked to a particular political party and did not want to be associated with the old Islamist groups, even calling the idea of an Islamic state a myth. The agenda of civil society groups was to strengthen Indonesian civil society, with a focus on justice, freedom and social autonomy.[62] The group was influenced by the thinking of Nurcholish Madjid and Abdurrahman Wahid.[63]

Nurcholish Madjid used the idea of secularisation in the sense of de-sacralisation of everything different from the truly divine (transcendental). Secularisation in this sense thus did not mean the removal of religious orientation from the norms and values of society, but a radical de-valuation of that which is part of the religious sphere.[64] The state is perceived as part of the worldly sphere rather than part of the divine. It should be secular in the sense that it always refers to religious and ethical values, but is never legitimised by a divine truth. Consequently, Muslims should explore the ethical values of Islamic teachings, but should not identify the state with religion, which would lead to the state's sacralisation.[65]

Abdurrahman Wahid argued that Islam as a way of life (Sharia) does not have a clear concept of the state.[66] The Islamic teachings consist of

---

60 Ricklefs, "Religion, Politics and Social Dynamics in Java," 122.
61 Liddle, "The Islamic Turn in Indonesia," 624.
62 Hefner, "Public Islam and the Problem of Democratization," 505; Hefner, *Civil Islam: Muslims and Democratization in Indonesia*, 12–13.
63 Barton, "Indonesia: Legitimacy, Secular Democracy, and Islam," 471 and 473.
64 Nurcholish Madjid, "Keharusan Pembaruan Pemikiran Islam dan Masalah Integrasi Umat," in *Islam Kemodernan dan Keindonesiaan,* ed. Nurcholish Madjid (Bandung: Mizan, 1993), 208.
65 Azyumardi Azra, *Islam Substantif* (Bandung: Mizan, 2000), 313.
66 Abdurrahman Wahid, *Islamu Islam Anda Islam Kita: Agama Masyarakat Negara*

basic values that underlie people's lives – justice, equality, and democracy – and operational frameworks, 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 ʿala raʿiyyatihi manuth bi al-mashlahah*). He argued that the Islamic worldview (*Weltanschauung*) consisted of values and operational principles and that Islam accommodates social practices as long as these are to the benefit of the people.[67] Consequently, according to Wahid, leadership that is not oriented towards justice and welfare is at odds with the Islamic worldview.[68] According to Wahid, Pancasila and religion have to be positioned functionally and clearly within their mutual relationship: Pancasila cannot displace religion and religion in turn must be formulated in a way that is compatible with Pancasila. Pancasila is seen as the rule of the game that should connect all religions and beliefs of Indonesian society and, for this reason, has to treat all religions equally in law and society.[69]

These socio-political and philosophical changes within the Muslim community were influenced by processes of modernisation and urbanisation in the New Order era. On the one hand, modernisation enhanced a purification process in the sense of distinguishing between religious and non-religious realms and strengthened the abandonment of syncretic practices by rejecting 'irrational' magical practices.[70] On the other hand, educational efforts and the process of urbanisation also fostered autonomous political and religious thinking.[71] The increase in ideological autonomy was rooted in particular in the increasing quality of Islamic higher education institutions, which were established from the 1960s to accommodate those leaving Islamic high schools (*Madrasah Aliyah)* and traditional boarding schools (*pesantren)*. After the curriculum changes in 1973 in particular, Islamic higher education was oriented towards more dynamic Islamic studies, able to explore the relevance of various Islamic thoughts to the conditions of Indonesia.[72]

Demokrasi (Jakarta: The Wahid Institute, 2006), 81–84.

67   Abdurrahman Wahid, "Pribumisasi Islam," in *Islam Nusantara: Dari Ushul Fiqh Hingga Konsep Historis,* ed. Akhmad Sahal and Munawir Azis*,* 44.

68   Wahid, *Islamu Islam Anda Islam Kita*, 96–99.

69   Wahid, 96–99.

70   Tamney, "Modernization and Religious Purification," 207.

71   Tamney, "Established Religiosity in Modern Society," 126.

72   Mirjam Künkler, "How Pluralist Democracy Became the Consensual Discourse Among

The modernisation of public education, now combining the teaching of religious and non-religious knowledge,[73] led to a change in religious consciousness in Indonesia. As the national curriculum required religious instruction in all public schools, 'pure' Islamic worldviews increased and syncretist beliefs declined, which can be seen as a process of religionisation.[74] At the same time, by strengthening the acceptance of the Pancasila, the view became dominant that creating an Islamic society was different from establishing an Islamic state. Education thus contributed to mediating between and accommodating the diverse religious communities in Indonesia. Education in the New Order era changed the positions of the socio-political landscape with regard to religious and state relations, particularly the grouping of Islamists and nationalists.[75] As a result of religious courses in public schools and modern Islamic education, many individuals and families who had been *abangan* became *santri* in terms of obedience and religious piety, but their political insights remained nationalist. Additionally, the boundaries between modernist and traditionalist Islamic groups blurred. While the NU and *Muhammadiyah* still had different religious traditions, there was increasing mutual acceptance of these differences.[76] The changes in the Muslim communities can also be seen in the formation of the *Indonesian Muslim Intellectuals Association* (ICMI), which was not fully supported by all Muslims. Nurcholish Madjid and Abdurrahman Wahid did not join the association. The ICMI was more a social empowerment group than a political one and consequently supported the emerging civil society.[77]

Secular and Nonsecular Muslims in Indonesia," in *Democracy and Islam in Indonesia,* ed. Mirjam Künkler and Alfred Stepan (New York: Columbia University Press, 2013), 57–58; Künkler, "Constitutionalism, Islamic Law, and Religious Freedom," 197.

73   The modernisation of education affected not only the curricula but also the management of schools. The traditional Islamic education at boarding schools *(pesantren)* was generally replaced by modern education managed by both the state and private organisations, who combined general and religious education. Gavin W. Jones, "Religion and Education in Indonesia," 41.

74   See also: Markus Dressler, "Modes of Religionization: A Constructivist Approach to Secularity," *Working Paper Series of the HCAS "Multiple Secularities – Beyond the West, Beyond Modernities"* 7 (Leipzig University, 2019).

75   Tamney, "Modernization and Religious Purification," 207 and 208; Tamney, "Established Religiosity in Modern Society," 126.

76   Liddle, "The Islamic Turn in Indonesia," 623.

77   Hefner, *Civil Islam: Muslims and Democratization in Indonesia*, 152.

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 after 32 years in power.[78] The New Order era was followed by a phase of democratic reforms, the so-called Reformation Era (*Era Reformasi*). While some people linked to the old regime did use Islamist hardliners to create chaos in certain regions,[79] Indonesia's successful democratic transition owes a lot to the supportive role of Islamic leaders and civil society,[80] among others Amin Rais of the *Muhammadiyah*, Abdurrahman Wahid, and Nurcholish Madjid.[81]

As a result of changes in the Muslim community, particularly the decreasing number of Islamists and nationalists and the growing number of *santri*, and the de-ideologisation of the political parties during the New Order, the political divide between the nationalist and the Islamist camp no longer applied. Baswedan – a political scientist and the present Governor of Jakarta – classified the political parties in the reform period into four categories: secular exclusive, secular inclusive, Islam inclusive, and Islamist. The secular exclusive party – for Baswedan the PDI-P – rejects the accommodation of a political agenda inspired by Islamic teachings within state policy. Secular inclusive parties like *Golkar* and the *Democrat Party* (PD) aim for the Islamic agenda to be accommodated within the politics of a religiously neutral state. Islam inclusive parties like the *National Mandate Party* (PAN) and the *Nation Awakening Party* (PKB) are based on Pancasila and also have close links with Islamic organisations, such as NU and *Muhammadiyah*. They promote religious pluralism and reject the establishment of an Islamic state. Finally, Islamist parties openly support the establishment of an Islamic state. Parties in this category are PKS, PBB,

---

78 Bacharuddin Jusuf Habibie, *Detik-Detik yang Menentukan: Jalan Panjang Indonesia Menuju Demokrasi* (Jakarta: THC Mandiri, 2006), 7.

79 Hefner, "Public Islam and the Problem of Democratization," 508. This conflict led to the loss of around 10,000 lives. The violence was exacerbated when 7,000 trained fanatic militias from *Laskar Jihad* in Java led by Ja'far Umar Thalib entered the conflict. Trained fighters under the command of Jemaah Islamiyah who had relations with al Qaeda were also involved in the conflict. See Barton, "Indonesia: Legitimacy, Secular Democracy, and Islam," 477; Sidney Jones, "Indonesian Government Approaches to Radical Islam Since 1998," in *Democracy and Islam in Indonesia,* ed. Mirjam Künkler and Alfred Stepan (New York: Columbia University Press, 2013), 114.

80 Hefner, *Civil Islam: Muslims and Democratization in Indonesia*, 12–13.

81 Barton, "Indonesia: Legitimacy, Secular Democracy, and Islam," 471 and 473.

and PPP.[82] However, the Baswedan classification has weaknesses when it comes to distinguishing exclusive and inclusive secular parties because in reality, there is no exclusive secular party in terms of both political principles and practices. The PDI-P, which Baswedan classified as exclusive secular, does not explicitly reject a political agenda inspired by Islamic teachings: In some regions, for example, PDI-P representatives have not rejected the formation of local Islamic laws and more generally, the PDI-P more often forms coalitions with the Islamic parties PKB and PPP.

Based on the principles and character of each political party in the Reformation Era, the more appropriate classifications would be: (1) nationalist parties, (2) nationalist parties rooted in Muslim organisations, and (3) Islamic parties. Here, nationalist parties should be regarded as distinct from the old nationalist group. The Reformation Era's nationalist parties no longer idealise the secular state; they accommodate the aspirations of Muslim groups as long as they do not conflict with Pancasila.

A number of new Islamist political parties were established at the beginning of the Reformation Era. In total, 184 new political parties formed in the lead up to the 1999 general election, of which only 48 met the requirements to participate in the election. A third of these parties said they were based on Islam. Some studies argue that political parties competing in the 1999 election were the legacy of the political flow of the 1955 election. In the 1999 election, the nationalist parties were the *Indonesian Democratic Party of Struggle* (PDI-P),[83] *Golkar*, the *Justice and Unity Party* (PKP),[84] and the *Nation Love Democracy Party* (PDKB).[85] Nationalist parties rooted

---

82 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.

83 The PDI-P is a nationalist party that has its roots in the PNI which merged with other nationalist parties in the New Order era to become the PDI. The PDI-P was founded due to the internal conflict within the PDI, triggered by state intervention to reject Megawati, the daughter of Sukarno, as President of the PDI, despite her election to that position. http://www.antaranews.com/berita/422453/profil-partai-demokrasi-indonesia-perjuangan-pdip.

84 *Indonesia's Justice and Unity Party* was founded by retired nationalist military and administrative leaders, including Try Sutrisno, Edy Sudrajat, Sutiyono, Siswono Yudhohusodo, and Hayono Isman. http://www.antaranews.com/berita/422116/profil-partai-keadilan-dan-persatuan-indonesia-pkpi.

85 The *Democracy and Love Nation Party* is a Christian political party founded by Manase Mallo and Seto Harjanto. http://www.seasite.niu.edu/indonesian/Indonesian_Elections/Indo-pemilu99/14pdkb.htm.

in Muslim organisations were the *National Mandate Party* (PAN)[86] and the *Nation Awakening Party* (PKB).[87] The Islamist parties included PPP, *The Crescent Star Party* (PBB),[88] the *Justice Party* (PK),[89] and the *Nahdlatul Ummah Party* (PNU).[90] This constellation underwent several changes in every election until 2014, when nationalist parties included the PDI-P, *Golkar*, the *Great Indonesia Movement Party* (*Gerindra*),[91] the *Democratic Party* (PD),[92] the *Democratic Nationalist Party* (*Nasdem*),[93] and the *People's Conscience Party* (*Hanura*).[94] The PAN and the PKB were still the nationalist parties that were rooted in Muslim organisations. The Islamist parties included the PPP and the PKS. In the elections between 1999 and 2014, there was no significant change in the number of votes won by these three groups. In the 1999 election, nationalist parties won 285 seats in the

86 The *National Mandate Party* was founded in August 1998 by Amien Rais. The PAN describes itself as a party that is open to all, however its leaders and members are primarily from the *Muhammadiyah*. Marcus Mietzner, *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation*, 256.

87 The *Nation Awakening Party* was founded by the NU's leaders to accommodate the internal political aspirations of the NU. Similar to the PAN, the PKB describes itself as being open to all, but the majority of its members and leaders are from the NU. Bush, *Nahdlatul Ulama and the Struggle for Power within Islam and Politics in Indonesia*, 120–22.

88 Muslims who had connections to the Masyumi leaders, among others, Yusril Ihza Mahendra, M.S. Kaban, and Anwar Harjono, founded the *Crescent and Star Party* at the beginning of the Reformation Era. The PBB was projected to be the successor of *Masyumi*. http://www.antaranews.com/berita/422121/profil-partai-bulan-bintang-pbb.

89 The *Justice Party* changed its name to *Justice and Prosperity Party* in preparation for the 2004 general elections. It was founded by university student activist alumni who had been part of an Islamic student movement in the New Order era and had established the *Indonesian Muslim Student Action Union* (Kesatuan Aksi Mahasiswa Muslim Indonesia, KAMMI) at the beginning of the Reformation Era. Mietzner, *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation,* 257.

90 The NU's scholars K.H. Idam Chalid and K.H. Syukron Ma'mun, who disagreed with Abdurrahman Wahid, founded the *Nahdlatul Ummah Party PKB*. https://news.detik.com/parpol/d-1059148/partai-persatuan-nahdlatul-ummah-indonesia-42.

91 The *Great Indonesia Movement Party* is a nationalist party founded by Prabowo Subianto, a fired army commander. http://partaigerindra.or.id/sejarah-partai-gerindra.

92 The *Democrat Party* is a nationalist party founded by Susilo Bambang Yudhoyono before he was elected President in 2004. http://www.demokrat.or.id/sejarah/.

93 The *Nationalist Democrat Party* was founded by the media businessman Surya Paloh in February 2010. http://www.antaranews.com/berita/423235/profil-partai-nasional-demokrat-nasdem.

94 The nationalist *People's Conscience Party* was founded in December 2006 by retired military leaders including Wiranto, Bernard Kent Sondakh, Subagyo HS, Suaidi Marabesy, and Ary Mardjono. http://www.antaranews.com/pemilu/berita/422136/profil-partai-hati-nurani-rakyat-hanura.

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.

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 Islamist parties did not apply. Coalitions were formed across party groups with the main competition being between the candidates from the nationalist parties. Liddle and Mujani have demonstrated that although religious orientation still played a role in the elections during the Reformation Era, its impact decreased tremendously. The political parties' position on how a secular state could be shaped became the dominant factor behind the voters' choice.[95]

Pancasila: Distinguishing between State and Religion

The Pancasila was formed by a process of public discourse and through the engagement of social movements. When the Indonesian nation's founders agreed on the Pancasila, they combined Western notions of modernisation, democracy and Islam with local traditions and conditions. According to Kaelan, Indonesian nationalism was formulated eclectically from different indigenous and alien concepts. Notonagoro refers to this as "incorporated eclecticism". Sukarno's thinking, for example, was the product of a combination of Western democracy, Islamism, Marxism, Sun Yat Sen nationalism, Gandhi's humanism, and the *causa materialis* of the Indonesian nation, namely the belief in God, humanity, and the spirit of mutual cooperation.[96]

Muhammad Yamin saw the historical roots of Indonesian nationalism in the pre-colonial kingdoms, describing the period of the Kingdom of Sriwijaya as first nationalism and that of the Kingdom of Majapahit as second nationalism. With the Indonesian motto *Bhinneka Tunggal Ika,* these periods established the notion of Indonesian unity in diversity.[97]

---

95 Liddle and Mujani, "Leadership, Party, and Religion," 839–44.
96 Kaelan, *Negara Kebangsaan Pancasila*, 2–3.
97 Kaelan, *Negara Kebangsaan Pancasila*, 3.

Soepomo referred to Western thinking as both individualist and collectivist. The individualist ideas included those of Thomas Hobbes, John Locke, Jean Jacques Rousseau, Herbert Spencer, and Harold J. Laski, all of whom supported the notion that the state was created as the result of a social contract. The collectivist view was based on the theories of Karl Marx, Friedrich Engels, Lenin, Spinoza, Adam Muller, and Friedrich Hegel, for whom the state exists to ensure the interests of the whole society. Finally, he also adhered to an integralistic paradigm, aligned with the idea of the kinship of Indonesia.[98]

Another crucial element in the formation of Indonesian nationalism was Islam and Islamic organisations such as SI boosting the independence movement.[99] Muslim leaders promoted the idea of an Indonesian state based on Islam, referring to Islamic thought that rejected the separation of state and religion. They did not consider the Islamic state to be a theocracy, but a divine democracy or a theo-democracy.[100]

From a constitutional perspective, the debates regarding ideas of a secular nation-state or an Islamic state occurred in several stages. At each stage, agreements were reached that had implications for the orientation of the state-religion distinction. The declaration of independence and promulgation of the 1945 Constitution and the Pancasila on 18 August 1945 should therefore not be understood as the final stage of an evolution that had been enforced by social change. Instead, social change, especially among Muslims, occurred only after independence. This constrasts with Germany, for example, where the adoption of the Basic Law in 1949 was preceded by fundamental social change through church reform, enlightenment,[101] the Free Religious movement and the *Kulturkampf*.[102]

The first phase in the negotiation process in Indonesia was the agreement between the Islamist and nationalist groups on the formulation of Pancasila in the Jakarta Charter, which alluded to an Islamic state with its first principle

---

98 Kaelan, *Negara Kebangsaan Pancasila*, 3–4.

99 Noer, *Gerakan Modern Islam di Indonesia 1900–1942*, 115; Maarif, *Studi tentang Percaturan dalam Konstituante*, 79.

100 M. Natsir, "Persatuan Agama dan Negara," in *Agama dan Negara dalam Perspektif Islam*, ed. M. Natsir (Jakarta: Media Dakwah, 2001), 93.

101 Stefan Korioth and Ino Augsberg, "Religion and the Secular State in Germany," *in National Report*: Germany, 321.

102 Todd H. Weir, *Secularism and Religion in Nineteenth-Century Germany: The Rise of the Fourth Confession* (New York: Cambridge University Press, 2014), 9–10.

"Belief in God, with the obligation to implement the Sharia of Islam for its adherents". This principle implied the absence of a separation of state and religion, but the state's authority to act within the religious domain and use its power to ensure Muslims abide by Sharia law. This first agreement was not legally binding because it was reached prior to Indonesian independence.

The second phase was the agreement on the promulgation of the 1945 Constitution by the PPKI on 18 August 1945. This included the preamble with the Pancasila and its first principle "Belief in the One Almighty God". The omission of the phrase "with the obligation to implement the Sharia of Islam for its adherents" was thought to accommodate the aspirations of non-Muslim communities, while the addition of the phrase "Almighty God" was thought to accommodate the principle of Islamic monotheism.[103] In January 1946, the Indonesian government also established a Ministry of Religious Affairs in an effort to compensate the Islamist group for the omission of the reference to Sharia law.[104] With this second agreement, the Indonesian state adhered to the principle of Belief in God without relating it to a particular religion. The state had no obligation or authority to ensure the implementation of religious teachings by their respective religious communities. Although this principle cannot simply be interpreted as the separation of state and religion, it affirms the existence of a distinction.

Germany's Basic Law also begins with a *nominatio dei*, a mention of God's name. The purpose, however, is more symbolic and serves to legitimise the constitution by underlining that it has been written with an awareness of a responsibility not only to human beings but also to an authority that transcends humanity, namely God. The *nominatio dei* confirms that the power of the constitution-making body is not absolute and is thus intended to limit said power. When amendments were made to the Basic Law in the early 1990s after German reunification, there was an initiative to create a new opening that omitted the reference to God, but the *Christian Democrat Party* (CDU) which had a majority position in the *Joint Constitutional Commission*, did not support this. In the final report, the commission emphasised that human will is not an omnipotent, final au-

---

103 John A. Titaley, "Hubungan Agama dan Negara Dalam Menjamin Kebebasan Beragama di Indonesia," in *Kebebasan Beragama Atau Berkepercayaan Di Indonesia,* ed. Chandra Setiawan and Asep Mulyana (Jakarta: Komnas HAM, 2006), 21.
104 Government Decision No. 1 / S.D 1946. Kementerian Agama RI, *Profil Kementerian Agama*, 2016.

thority, and that precisely this is expressed by invoking one's responsibility before God. Nevertheless, the phrase "responsibility before God" in the German Basic Law's preamble is not a religious justification of the constitution. It is related to Article 1, which is about the inalienable dignity of human beings and the duty of the state to protect human dignity.[105] Human dignity does not exist only because of the will of the constitution-maker, but existed before the state.

The second phase of the Indonesian process was a provisional agreement, since the 1945 constitution was intended from the outset as a transitional constitution. The Islamist group accepted this agreement only because of the promise that an Islamic state could be championed again after the constitution-forming bodies had been formed following the general election. As a consequence, the debate on the state's founding principles re-emerged in the *Constitutional Assembly* of 1957–59 in a similar constellation: the nationalists wanted to defend Pancasila and the Islamist group proposed Islam as the state's foundation. The discussions were heavy and since no group had an absolute majority, no new agreement was reached. After this failed attempt to reformulate Indonesia's founding principles, the government dissolved the *Constitutional Assembly* and proposed a return to the 1945 Constitution and upholding Pancasila for the sake of political stability; the government further proposed a shift from liberal democracy towards guided democracy.[106] To accommodate the Islamist group, President Sukarno's decree of 5 July 1959 stated: "we believe that the Jakarta Charter of June 22, 1945 inspired the 1945 Constitution, and is part of a chain of unity with the Constitution". Ismail Suny has argued that this statement confirms that Islamic law has an authoritative basis in the Indonesian legal system.[107]

The Presidential Decree and the recognition of the Jakarta Charter inspiring the 1945 Constitution constitute the third phase of the negotiating process regarding Pancasila. After this phase, the matter of the

---

105 Tine Stein, "Constitution-Making and Religion in West Germany in the Shadow of State Failure," in *Constitution Writing, Religion and Democracy*, ed. Asli Ü. Bali and Hanna Lerner (Cambridge: Cambridge University Press, 2017), 79–83.

106 Konstituante Republik Indonesia, *Risalah Perundingan Tahun 1959*, Jilid 1, (Jakarta: Konstituante RI, 1959), 27.

107 Ismail Suny, "Kedudukan Hukum Islam dalam Sistem Ketatanegaraan Indonesia", in *Dimensi Hukum Islam Dalam Sistem Hukum Nasional*, ed. Amrullah Ahmad et al. (Jakarta: Gema Insani Press, 1996), 133–34; Utrecht, "Religion and Social Protest in Indonesia," 399.

states's founding principles was no longer debated in the legal constitutional sphere. The position of Pancasila became even stronger during the New Order period, which firmly pursued a single-ideology policy in both political and social religious life.[108] The state used Pancasila to legitimise its power and policies.

The debate surrounding Pancasila's meaning, and especially the principle of "Belief in the One Almighty God" arose for a fourth time in the late 1990s in the course of Indonesia's democratisation process, and again focused on the relationship between state and religion. Based on Pancasila, state and religion are two separate entities, but there was still no agreed constitutional framework on whether they should be separated or not, and how their relationship should be shaped if they were not separated. Parallels can be drawn between this debate and the conflict between religion and the secular movements in the German *Kulturkampf* from 1871 onwards.[109]

In the Reformation Era, Islamic politics has shifted from the struggle to make Islam the state's foundation to the struggle to implement Islamic law in state law through article 29 paragraph (1) of the 1945 Constitution. The debate moved from ideology to the realm of Muslims' rights and the government's obligation to apply Islamic law.[110] The discussion surrounding the proposed amendment to article 29 took place from 1999 (first amendment) to 2002 (fourth amendment). Despite this long negotiation process, the Indonesian parliament ultimately agreed not to put the amendments to a vote and to leave the article unchanged, as the two parties who supported the amendments (PBB and PPP) feared they would be defeated. It became clear that Islamic politics had lost influence for various reasons: (1) there was a lack of a single, unifying authority, (2) there was a lack of cohesion between the Islamic political parties and interest groups in which patronage relationships played a major role, and (3) the electoral system emphasised personal considerations over religious or ideological ones. According to Michael Buehler, the fragmentation of Islamic authority in Indonesian civil society is one of the main reasons why Islam and the nation-state are able

---

108 Hasyim, *State and Religion*, 17.
109 Weir, *Secularism and Religion in Nineteenth-Century Germany*, 9–10.
110 Nadirsyah Hosen, "Religion and the Indonesian Constitution," *Journal of Southeast Asian Studies* 36, no. 3 (2005): 420.

to combine in Indonesia, because agreements can be reached more easily and more pragmatically.[111]

The two most important functions of Pancasila are as the nation's way of life and the state's foundation. As a way of life, Pancasila is a moral aspiration involving the concept of the ideal life. As a state foundation, Pancasila is a manifestation of the national agreement on one unifying philosophy of government, which became the foundation of the modern democratic Indonesian state. In terms of legal theory, Pancasila is a *Staatsfundamentalnorm*. The principles of Pancasila form a pyramid-shaped hierarchical unity.[112] The highest principle is the first one, the principle of the "Belief in the One Almighty God". This inspires the other principles. God is the *prima causa* affecting humanity (second principle), nationality (third principle), and state administration based on deliberation (fourth principle) to bring social justice (fifth principle).

The relationship between state and religion is inextricably linked with the influence of religions in the formation of national identity and resistance to the colonial regime. Islam has become a central element of Indonesian statehood and identity. It has not been limited to the private sphere, but has also become the spirit of managing public affairs. As the Indonesian people had not suffered the bitter experiences that Europeans had with regard to the relationship between religion and state, the Dutch colonial government's policy of political secularisation and a religiously neutral state did not succeed in Indonesia.[113]

As an agreement, Pancasila symbolises a compromise between a secular nation-state and an Islamic state. On the one hand, it affirms that the state is a separate organisation that is not a religious organisation. This means that the state remains in a profane or worldly territory with all its rules and devices being established and carried out secularly. However, the state's actions, though agreed and executed secularly, can be influenced by reasons derived from religious teachings. The dynamic institutionalisation of Indonesian secularity was affected by shifts in Pancasila's meaning.[114] Pancasila is the result of the attempt to overcome the problem of ethnic and religious

111 Michael Buehler, "Islam and Democracy in Indonesia," *Insight Turkey* (2009): 54.
112 Kaelan, *Negara Kebangsaan Pancasila*, 152.
113 Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, dan Aktualitas Pancasila* (Jakarta: Kompas Gramedia, 2011), 56.
114 Marian Burchardt and Monika Wohlrab-Sahr, "Multiple Secularities: Religion and Modernity in the Global Age' – Introduction," *International Sociology* 28, no. 6 (2013): 606.

heterogeneity through integration and, in doing so, to achieve national unity. It is thus a form of secularity for the sake of national unity with the aim of achieving progress, independence and the welfare of Indonesian society.[115]

Although Pancasila does not produce secularism, it is the result of a cultural parallel to the political secularisation process before Indonesian independence.[116] With Pancasila as the state's foundation, religion was no longer ideologically dominant but had to compete with other views. Religious life became more of an individual choice, rather than one of national belonging. As a secular organisation, the state does not merge with any particular religious institution. Even if the state has the obligation to protect and facilitate religious life, each religion retains its own institutions and systems. Pancasila thus embraces the notion that the distinction between the realm of the state and the realm of religion is the root of modernisation and the rationalisation of political life.[117] Religion and state are distinguished and closely interconnected at the same time: On the one hand, religion is a societal realm that has to be protected and facilitated by the state; on the other hand, religion can play a role in the state's governance by strengthening social ethics and influencing state policies and laws through political and legal mechanisms. Theoretically, in this way religion becomes 'public religion', distinct from the thesis of separation and privatisation, but still supporting the thesis of differentiation. Religion and state are not separated, but are distinguished by the limits of their respective authorities. We can describe this as 'twin tolerations'.[118]

In order to achieve this situation of twin tolerations, the involvement of religious institutions in the political process must be subject to the principles of public reason and deliberation. Religious teachings may be used to inspire the political process only if they are formulated in a way that reflects the rational nature of democratic deliberation. Simply quoting scriptural postulates is insufficient. A public decision is rational if it is based on facts, oriented towards the long-term public interest, and involves the participation of all groups. Nevertheless, quite often the success of a democratic decision-making process is decided first in the internal

---

115 Wohlrab-Sahr and Burchardt, 890.
116 Rumadi, *Sekularisasi Politik Dalam Pemilu 2014*, Koran Sindo, April 23rd, 2014.
117 Ahmad Nur Fuad, "Sekularisasi Politik (Pengalaman Amerika Serikat dan Dunia Islam)," *Salam* 12, no. 2 (2009): 92.
118 Latif, *Negara Paripurna*, 43.

religious groups, even before a debate enters the rational and fact-oriented realm of the state. In these prior internal debates, arguments are not free but have to be rooted in a comprehensive religious doctrine.[119]

In Germany, church-state relations are characterised as an "amicable separation"[120], or as Romero puts it, a soft version of secularism.[121] The provisions of the Constitution of the former Weimar Republic (WRV), which Germany's Basic Law refers to, balance separation and cooperation between the state and the religious communities. The state regards religious groups as autonomous corporations that regulate and manage their affairs independently within the bounds of the rule of law. Religious autonomy ends when it comes into conflict with other societal realms: For example, religious groups cannot supersede the state's authority by religious law.[122] Despite the state's religious neutrality, religion is still an integral part of the public domain.

In Indonesia, the Pancasila represents a symbiotic paradigm, according to which, state and religion are distinct but not strictly separated. This is the result of the debate between the integralist and secularist camp that lasted from before independence until Sukarno's Presidential Decree of 5 July 1959. In the Reformation Era, the discussion of the 1945 Constitution's amendments has shifted from the confrontation between the integralist and the secularist paradigm to a discussion about employing either the integralist or the symbiotic paradigm. Since its formulation in 1945, there has been increasing acceptance of Pancasila, and thus of the symbiotic paradigm. Based on this paradigm, religious organisations have room to give state law a religious overtone. However, simply stating that they are giving a religious command is insufficient. They must ensure that what they formulate reflects the rational considerations inherent in the process of democratic deliberation.[123] In contrast, in Germany, the impact of religious communities is limited to the social sphere.[124]

---

119 Alfred C. Stepan, "Religion, Democracy, and the 'Twin Tolerations,'" *Journal of Democracy* 11, no. 4 (2000): 45.
120 Stein, "Constitution-Making and Religion in West Germany," 93.
121 Alicia Cebada Romero, "The European Court of Human Rights and Religion: Between Christian Neutrality and the Fear of Islam," *New Zealand Journal of Public and International Law* 11, no. 1 (2013): 80.
122 Korioth and Augsberg, "Religion and the Secular State in Germany," 325.
123 Latif, *Negara Paripurna*, 109.
124 Korioth and Augsberg, "Religion and the Secular State in Germany," 325.

The widespread acceptance of Pancasila in Indonesia's predominantly Muslim society shows that at least the majority of Indonesians prefer reformist thought on the relationship between religion and the state. The traditionalist paradigm that supports the unification of religion and state is clearly rejected by the majority of Indonesian Muslims, as is the secularist paradigm that has not been a reference since the formulation of Pancasila with the first principle of "Belief in the One Almighty God".

Pancasila is an open ideology[125] that can be interpreted differently by all societal groups. There is no state monopoly on how one interprets Pancasila as this would result in dictatorship. However, the lack of a single legitimate interpretation results in uncertainty on the boundaries between the domains of religion and the state. Each group draws these boundaries from its own perspective, and decides where and how the state has authority to regulate religion. State law is, of course, given primacy. However, since religion has room to influence state law, the state's interpretation and law can be overridden by the interpretation of the majority. An example of this can be seen in the Blasphemy Law,[126] which determines whether an action has deviated from the fundamental teachings of a certain religion. Here, the interpretation of the majority religious group outweighs the minority's interpretation. A further example is Indonesia's Marriage Law,[127] which declares marriage as valid only if it is performed in line with the religion of the persons involved. The conditions for this being the case are determined by the dominant religious views. In the case of the Blasphemy Law, religion's impact on the state via formal legal instruments is furthered by the fact that the Blasphemy Law only refers to the six officially recognised religions in Indonesia: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Local religions and beliefs that have not been officially recognised were subject to discrimination at least until the decision of the Constitutional Court Number 97/PUU-XIV/2016 that recognised belief and religion as separate but equal entities. Now the term 'religion' in the Civic Administration Law not only refers to officially recognised religions but also includes beliefs.

125 Madjid, *Tradisi Islam*, 14.
126 Government Regulation No. 1/PNPS/Tahun 1965 on Prevention of Religion's Abuse or Blasphemy which became Act No. 5/1965 on the Declaration of Decree of the President as Undang-Undang.
127 Law No. 1 of 1974 on Marriage.

As the state has to regulate religion, there is also space for state interventions in the realm of religion. The legal distinction between religion and belief, and the distinction between recognised and unrecognised religions are a form of massive state intervention in the religious domain. As the state is a secular institution, it is clear that the more state law governs the realm of religious life, the higher the potential for state interventions in the religious domain, which can be understood as an aspect of (intensified) secularisation. From this perspective, the communities' adherence to religious law is no longer the result of their religious convictions, but of their compliance with state law as citizens.

As a point of comparison, the German Constitutional Court once defined 'religion' as "those confessions, which have in the course of time been developed by the civilised people on the basis of common moral convictions". This definition is no longer used. Today, the notions of religion to which the Court refers are very general and open, for example "an assurance about the existence and the content of certain truths being connected to a human being.[128] There are more concrete criteria for when religious communities can be acknowledged as public corporations. They have to meet three criteria: (1) permanency, with regard to their number of members and their impact on society, (2) compliance with the law, as well as legal duties and obligations, and (3) loyalty to the state, namely a minimum of recognition of and respect for the state through acceptance of the state's legal system.[129] There is currently debate in Germany about whether Islamic organisations can be recognised as public corporations, because Muslim organisations lack an overarching structure.[130]

In the case of Indonesia, An-Na'im argues that there is no sharp dichotomy between an Islamic and a secular state because even Muslims regard the state as a secular political institution. In Indonesia, secularism does not mean the exclusion of Islam from public life or its privatisation. Instead, a balance has been found with the institutionalisation of Islam and the state's regulation of the limits within which Muslims can propose Sharia principles for adoption into state law and policy.[131]

---

128 Korioth and Augsberg, "Religion and the Secular State in Germany," 324.
129 Wolfgang Weiß and Afe Adogame, "The Interplay of Religion and Law in Germany," *Religio* VIII, no. 1 (2000): 56–59.
130 Stein, "Constitution-Making and Religion in West Germany," 92.
131 An-Na'im, *Islam and the Secular State*, 261.

National Legal Policy on Islamic Law

Both state policy on Islamic groups and their legal aspirations evolved with the change of regimes in Indonesia. During the Old Order era, especially during the period of guided democracy from 1959–1965, the policy on Islamic groups altered from efforts to involve them in the process of founding the state and its concept of democracy, to the state dissolving *Masyumi*. In this period, Sukarno more or less maintained the Dutch policy on religion, which aimed to control and oversee religion and religious activities.[132]

This policy changed during the New Order, which was characterised by both tolerance of the communities' religious life and social organisation, and the targeted elimination of political Muslim movements. Religion was confined to the private realm.[133] The political and legal aspirations of the Islamic groups were accommodated in the state's legal system and administration through the *Ministry of Religious Affairs* and the establishment of the *Indonesian Ulema Council* (MUI). In the last two tenures of President Suharto, several aspects of Islamic law were put into state law. In particular, Law No. 7 of 1989 on Religious Courts recognised religious courts as being equal to other courts.[134]

During the Reformation Era, all religious groups have had the same space to grow and develop. Several Islamic organisations were established, including political parties, marking the re-emergence of religious identity politics in the political arena. However, Islamic parties did not gain a significant number of votes, indicating a major shift in the socio-political configuration of Muslim communities in Indonesia for whom political choice was no longer related to personal religiosity.[135] This also confirms that most Indonesian Muslim communities hold reformist views on the relationship between religion and the state.

---

132 Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* (2014): 451.

133 Amika Wardana, "Agama dan Penuaan Masyarakat Indonesia: Sebuah Agenda Penelitian," paper presented on AUD and Insula UNY Discussion, 19 March 2014, 4.

134 Butt, "Islam, the State and the Constitutional Court in Indonesia," 284; Nadirsyah Hosen, "The Constitutional Court and 'Islamic' Judge in Indonesia," *Australian Journal of Asian Law* 16, no. 2 (2016): 2.

135 Robin Bush, "Regional 'Sharia' Regulations in Indonesia: Anomaly or Symptom?", in *Expressing Islam: Religious Life and Politics in Indonesia*, ed. Greg Fealy and Sally White (Singapore: ISEAS, 2008), 178.

Following Indonesian independence, the legal pluralism that had been in place under the colonial government was a serious concern for the new independent state. Legal pluralism had meant citizens were treated differently and often discriminated against on the basis of race, religion, ethnicity and regionalism. The struggle for freedom was thus not only a struggle for independence from the colonial regime but also a struggle for equal rights and the end of different legal treatment. For this reason, the young post-colonial Indonesia clearly rejected legal pluralism and held that legal unification should replace plural colonial law. This also implied the rejection of religious law,[136] a course that became explicit in the transition from the Old Order to the New Order in the mid-1960s. The *State's Direction Principles* (GBHN)[137] make it clear that a national legal system originating from Pancasila and the 1945 Constitution should be established. This policy was supposed to improve religious life and belief in God Almighty in harmony with and in accordance with Pancasila,

The state now had to juggle two competing objectives: that of realising a simple and definite legal unification on the one hand and that of accommodating the plurality of laws that exist in society on the other. The existence of the marriage registration law[138] during the Old Order, and more recently of the Marriage Law, the Compilation of Islamic Law (KHI),[139] the Zakat Management Law,[140] the Hajj Law,[141] the Waqf Law,[142] the Sharia Banking Law[143] and State Sharia Securities Law (SBSN)[144] are widely seen as indications of Muslim groups' success in incorporating Islamic law into state law. However, these laws were in fact needed for legal unification. The laws have three objectives: (1) unifying the laws that apply to Muslims; (2) maximising the economic potential of Muslims; (3) protecting and facilitating religious life. Since these objectives

---

136 However, current developments point in a different direction since many countries have adopted legal pluralism, particularly in the private domain (Mirjam Künkler and Yüksel Sezgin, "The Unification of Law and the Postcolonial State: The Limits of State Monoism in India and Indonesia," *American Behavioral Scientist* 60, no. 8 (2016): 988).

137 *Garis-Garis Besar Haluan Negara* (GBHN) promulgated as a decision of the People's Assembly as the highest state organ based on the 1945 Constitution before the amendment.

138 Law No. 22 of 1946 on Marriage Administration.

139 Presidential Instruction No. 1 of 1991.

140 Law No. 23 of 2011 on Zakat Management.

141 Law No. 13 of 2008 on Hajj Management.

142 Law No. 41 of 2004 on Waqf.

143 Law No. 21 of 2008 on Sharia Banking.

144 Law No. 19 of 2008 on State Sharia Securities.

are defined by the state as a secular institution, they have to be understood as secular themselves.

The goal of Islamic law unification, including the homogenisation of Islamic groups, is evident in the Marriage Law and the KHI. The Marriage Law was established to apply to all citizens and ensure administrative and procedural unity, although substantively determined by the people's respective religions and beliefs. The KHI arose from the need for a uniform Islamic law that could be applied in religious courts to decide cases of marriage, inheritance, and *waqf*.[145] Before the KHI, the Supreme Court, as the oversight body for religious courts, was confronted with the difficulty of lacking an authoritative source of material Islamic law, resulting in differences of verdict, and public unrest.[146]

The second goal, maximising the economic potential of Muslims, led to the formation of the Sharia Banking Law, the Waqf Law, the SBSN Law, and the Zakat Law. The Zakat Law was established so that *zakat* could be used to improve welfare, alleviate poverty and eliminate social disparities. *Zakat* was to be managed professionally including the provision of supervisory bodies.[147] The Waqf Law does not merely make *waqf* part of worship, but stresses its economic potential to advance social welfare. Under the law, *waqf* should be managed for the benefit of society in accordance with the principles of Sharia. The main objective of the SBSN Law is to increase the state revenue in order to support national economic sustainability. The law was expected to mobilise public funds and help develop the Sharia economic and financial sectors as part of the national economic system.[148] The Sharia Banking Law responds to the manifold and increasing demands for Sharia banking services and products needed to raise public funds to boost the national economy.[149]

The Hajj Law serves to facilitate worship in Indonesia. It recognises citizens' freedom to worship and obliges the state to ensure worship can take place in a safe and orderly manner.[150] The law also states that the state should manage pilgrimages, because they influence the good name and

---

145 Mohamad Abdun Nasir, "The Kompilasi Hukum Islam and Debates on Shari'a: Reconsidering Islamic Law in Indonesia," *al-ahkam* 22, no. 2 (2012): 198.
146 Wahid, *Fiqh Indonesia*, 157.
147 General Elucidation of Law No. 38 of 1999.
148 Considerant of Law No. 19 of 2008.
149 Considerant of Law No. 21 of 2008.
150 Considerant of Law No. 17 of 1999.

dignity of the Indonesian abroad.[151] Another law that led to legal pluralism is the Aceh Special Autonomy Law,[152] which allows the enforcement of Islamic law through local laws that differ from national laws. However, this law relates specifically to the conflict in Aceh over the granting of special regional autonomy. Moreover, on a practical level, the local laws in Aceh as well the local Sharia regulations in some other regions only relate to some minor criminal offences related to decency.[153]

The State and Aspirations for Islamic Law – Democratic and Authoritarian Regimes

Indonesia's democratic and authoritarian systems have taken different approaches to accommodating religious law. While the democratic regimes of the Reformation Era have created several laws that adopted or derived from Islamic law or were at least friendly towards Islamic law, under the authoritarian regimes of the Old Order (guided democracy) and the New Order, the state dominated religion by restricting and controlling religious groups and rejecting their aspirations to implement Islamic law. [154]

The Old Order regime was opposed to Islamic groups and did not issue any laws deriving from Islamic law. Laws concerning religion, such as the Blasphemy Law, did not directly relate to Islamic law, but had an immense effect on religious life. The Blasphemy Law even aims to control the development of religions other than those that have been officially recognised by the state. From an institutional perspective, the most important legal development during the Old Order was the invention of public mechanisms for marriage and divorce, the administration of which was handled by the *Ministry of Religious Affairs*. Furthermore, the number of religious courts decreased because of Law No. 32 of 1954, which prohibited the establishment of courts outside Java.[155]

---

151 General Elucidation of Law No. 17 of 1999.

152 Law No. 11 of 2006 on Aceh's Governance.

153 Amran Suadi and Mardi Candra, *Politik Hukum Perspektif Hukum Perdata dan Pidana Islam Serta Ekonomi Syariah* (Jakarta: Prenadamedia, 2016), 390–92; Bush, "Regional 'Sharia' Regulations in Indonesia," 176.

154 Moh. Mahfud MD, *Politik Hukum di Indonesia* (Yogyakarta: UII Press, 1998), 76–77.

155 The logic of Law No. 32 of 1954, which concentrated the power and functions of religious courts in the general court in Java, was based on two former laws: Law No. 19 of 1948 and

While religious life developed and was even supported by the state in the New Order period, it was strictly limited to the realm of worship to avoid disrupting the stability of the regime. The state also put substantial pressure on unrecognised religions and beliefs and many beliefs were prohibited and disbanded. Islamic political activities were repressed, and religious organisations and adherents of beliefs were kept under surveillance by the government bureaucracy, especially the *Ministry of Religious Affairs*.[156] Nevertheless, the state also facilitated some religious activities, such as the construction of mosques. In terms of institutions, the New Order period saw significant developments with the re-establishment of religious courts as separate courts parallel to public courts with the authority to decide on marriage and inheritance issues.[157] The state also encouraged the formation of a single organisation for each recognised religion. These organisations would ultimately become instruments of state control over religion. They were the MUI for Islam, the *Communion of Indonesian Churches* (PGI) for Protestants, the *Indonesian Catholic Church Conference* (KWI) for Catholics, *Parisada Hindu Dharma Indonesia* (PHDI) for Hindus, the *Indonesian Buddhist Representatives* (WALUBI) for Buddhists, and the *Supreme Council of Confucian Religions of Indonesia* (MATAKIN) for Confucians.

In the democratic Reformation Era, the aspirations of Islamic groups can be seen in the formation of social and political Muslim organisations, and the implementation of certain Islamic laws in state law. Some of these laws, such as the Pornography Law[158] and the Sharia local law have been controversial. Where Islamic law has been successfully implemented, this has generally been related to Sharia economic arrangements and certain religious regulations related to *muamallah*.[159]

That the democratic regimes in Indonesia have been and are more responsive to Islamic law than authoritarian regimes is in accordance with the theory of the relationship between politics and law, which states that more democratic regimes tend to produce more responsive laws and,

---

Emergency Law No. 1 of 1951.

156 Sezgin and Künkler, "Regulation of 'Religion' and the 'Religious,'" 469.

157 See Law No. 14 of 1970 and Law No. 7 of 1989.

158 Law No. 44 of 2008 on Pornography.

159 These laws are the Hajj Law, the Zakat Management Law, the Waqf Law, the SBSN Law, and the Sharia Banking Law.

conversely, that authoritarian regimes create repressive laws.[160] With regard to the determination of boundaries between the state and religion, authoritarian regimes dictate the determination of these boundaries whereas in democratic regimes, the boundaries are negotiated more dynamically and are influenced by the given constellation of political forces. As a consequence, the agenda of secularisation is more applicable to authoritarian regimes than democratic regimes, which can even become a space for religious revival, including in the state's domain.

Positivisation Leads to Secularisation

There have been efforts to enforce Islamic law for Muslims in state law since before Indonesia's independence, both in the form of efforts to establish Islam as the state's founding principle, and in the form of demands to implement Sharia as national law for Muslims.

Sharia can be divided into five legal spheres. First, matters of personal status such as marriage, divorce, *waqf*, and inheritance. Second, the regulation of economic transactions and banking. Third, regulations on religious practices such as dress codes, gambling, and other provisions related to decency. Fourth, penal law including types of punishment. And fifth, the use of Islam as guidance for how the government operates. According to Azyumardi Azra and Arskal Salim, Indonesia's application of Sharia in state law is limited to areas that are viewed as personal, optional rules.[161]

Islamic law is an integral part of Islamic teachings that come from God through the Qur'an and Sunnah. From this point of view, Islamic law is not a product of politics. When Islamic law is applied to a particular political issue, it thus requires political legitimacy that is established by the legislation mechanism. However, efforts to apply Islamic law to controversial political matters result in problems for interreligious relations in Indonesia. In order to maintain the commitment to religious plurality, Islamic law is enforced only on questions and to a level that makes non-Muslims feel

---

160 Mahfud MD, *Politik Hukum di Indonesia*, 76–77.

161 Arskal Salim and Azyumardi Azra, "Introduction: The State and Shari'a in the Perspective of Indonesian Legal Politics," in *Shari'a and Politics in Modern Indonesia,* ed. Arskal Salim and Azyumardi Azra (Singapore: Institute of Southeast Asian Studies, 2003), 11–12.

secure. As with Western laws or customary laws, it is only at this stage that Islamic law becomes part of national law.[162]

State laws derived from Islamic law are usually regarded as evidence of Muslim groups' success in their fight to implement Sharia.[163] However, in this context, the validity of Sharia is governed by state law. The state may restrict or even alter the substance of the law derived from Sharia with the result that there is often a difference between state law derived from Sharia and 'Sharia' itself. Furthermore, the positivisation of Sharia law places its administration and enforcement more under the state's authority than religious authority. At some point, one's obedience to the law is then no longer based on religious teachings but based on the fact that it is state law, with the result that the relationship is no longer between servant and God, but between citizens and the state. As such, the implementation of Islamic law in state law, which was originally intended to ensure the enforcement of Islamic law, instead resulted in the secularisation of the law.[164]

In the case of the Marriage Law, secularisation occurred by restricting marriage and divorce, and organising them through public administrative processes. Although marriage must be conducted in line with religion, certain registration requirements must be met for the marriage to be considered legally valid. The Marriage Law also differs from Islamic law on the subject of women's rights, monogamy, and divorce mechanisms.[165] Differences between state law and Islamic law can also be found in the Zakat Management Law, the Waqf Law, the Sharia Banking Law, and the SBSN Law.

Islamic law, which is formalised in the Compilation of Islamic Law (KHI), also underlies processes of secularisation. As a product of the New Order political process, the KHI is a reflection of Indonesian society with its various motifs, cultures, and other interests. Nevertheless, it contains certain aspects of Islamic law that had to be unified and reduced with the result that it does not represent the opinions of all groups. As a product of

---

162 Wahid, *Fiqh Indonesia*, 12.

163 Wahid, 13.

164 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 for Syria and Tunisia.

165 Marc Cammack, Adriaan Bedner, and Stijn van Huis, "Democracy, Human Rights, and Islamic Family Law in Post Soeharto Indonesia," *New Middle Eastern Studies* 5 (2015): 8.

a political process, the KHI results from its status as a state law, not from its religious status. Islamic law was secularised through its positivisation within the KHI which was a political compromise reduced to the fields of marriage, *waqf*, and inheritance, while Islamic law actually should have a perfect character (*kamil*), be harmonic (*wasathiyah*), dynamic (*murunah*), and cover the entire sphere of human life (*syumul*).[166]

In terms of institutions, the division of the judicial authority and the terminology of religious law and (non-religious) state law imply the existence of distinct religious and non-religious areas. Mazurki Wahid interprets this as a manifestation of a secularist outlook, because the religious law gets its justification from the state while the separation between religious and state territory is maintained.[167]

Indonesia's Secularity: National Integration, Accommodating Diversity, and Individual Freedom

The basis of secularity in Indonesia is Pancasila. As the national ideology, Pancasila is not only the philosophical foundation of the state's administration but also provides guidance on social life. The use of Pancasila to address the issue of national integration challenges the notion of individual freedom and religious freedom in particular. The first principle of Pancasila, "Belief in the One Almighty God", accommodates both nationalist and Islamist groups, but not traditional local religions and beliefs. Indeed, the first principle has even become the basis for the denial and control of these creeds and beliefs, and serves as the basis for the Blasphemy Law, through which the six recognised religions protect themselves from heresy or deviance such as syncretist beliefs or local religious traditions. In a similar vein, Indonesian Marriage Law states that marriages must be held in accordance with the couple's religion. This is interpreted as referring only to the major religious teachings, controlled by the *Ministry of Religious Affairs*.[168] From a liberal perspective, the law is supposed to be an

---

166 Wahid, *Fiqh Indonesia*, 140.
167 Wahid, 99. Similar processes of reform and positivisation of Sharia also took place in Egypt, which Talal Asad refers to as part of secularisation (Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (California: Stanford University Press, 2003), 218).
168 See the Indonesia Constitutional Court's Decision No. 68/PUU-XII/2014.

institution to guarantee freedom of religion and to protect minorities. Yet in Indonesia, as well as in some Western democracies, minority religions are at least partly incompatible with the dominant values and traditions, which puts them in a less protected position.[169]

The development of Indonesian secularity was determined by dynamic changes in the socio-political power structures. Islamic law has been and will likely continue to be incorporated into state law on a broader scale where three conditions are met: (1) the power of the Islamist and the nationalist groups is relatively balanced. This occurred both during the discussions in the BPUPKI and in the Reformation Era. (2) The Islamist group is in possession of state power. This has never happened in Indonesia, not even during the government of Abdurrahman Wahid, the former chairman of the NU, since Wahid's policies cannot be attributed to the Islamist camp. (3) 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. Secularity consequently aimed to balance socio-political power.[170]

There are limits on the areas in which Islamic law may become the substance of state law. First, it may only deal with the governance of religion in person-to-person relationships (*muamallah, forum externum*), and not the relationship between man and God, which consequently fully becomes individual (worship, *forum internum*). For example, the Hajj Law regulates the management and organisation of *hajj* pilgrimages, but it does not regulate the validity and rituals of *hajj* worship. Second, Islamic law is never incorporated into public law (criminal law and government), because public law has to apply equally to all citizens regardless of their religion.[171] These two limits build a form of secularity for the sake of balancing and accommodating the religious diversity of Indonesian society. The guiding ideas are the principle of the state not intervening in the individual's religious life and the enactment of public law to ensure tolerance and respect for the equal rights of citizens.

---

169 Ofrit Liviatan, "Faith in the Law – The Role of Legal Arrangements in Religion-Based Conflicts Involving Minorities," *Boston College International and Comparative Law Review* 34, no. 1 (2011): 54.

170 Wohlrab-Sahr and Burchardt, "Multiple Secularities," 890.

171 There are some exceptions to this in the province of Aceh. However, these exceptions are limited to this one province. In terms of content, the regulations in Aceh relate to the subject of decency.

The boundaries between the domain of the state and the religious domain can be identified by analysing the secularity enshrined in Pancasila and the development of state law regarding religious life.

- *First*, there is a clear distinction between state institutions, state law and religions. The state remains within the secular 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 the 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. This can be seen for example in the limitation of the religious courts, the limitation of polygamy, and the regulation of *zakat*. The state's authority to limit Islamic law that has become state law has been reinforced in the Constitutional Court's decisions[172] on the judicial review of Marriage Law,[173] on the Religious Court Law,[174] and on the Zakat Management Law.[175]

- *Fourth*, the state laws' regulation of religious life relates only to the *forum externum*,[176] 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 themselves.

- *Fifth*, public law (constitutional, administrative, and criminal law) is the domain of state law only, Islamic law never becomes public law.

---

172 Alfitri, "Putusan Mahkamah Konstitusi Sebagai Tafsiran Resmi Hukum Islam di Indonesia," *Jurnal Konstitusi* 11, no. 2 (2014): 313.
173 The Constitutional Court's Decision No. 12/PUU-V/2007.
174 The Constitutional Court's Decision No. 19/PUU-VI/2008.
175 The Constitutional Court's Decision No. 86/PUU-X/2012.
176 The Constitutional Court's Decision No. 140/PUU-VII/2009.

Conclusion

The socio-religious conditions of Indonesian society are closely connected to the social groups that determined the relationship between religion and state. In the pre-independence period, in terms of political orientation the *santri* mainly identified with the Islamist group that wanted Islam as the state's foundation, while the *abangan* and *priyayi* became part of the nationalist camp, which promoted a secular nation-state. A compromise between these two groups was reached with the formulation of Pancasila in the Jakarta Charter, which pointed to an Islamic state, which would have been obliged to implement Sharia for Muslims.

However, the formulation of Pancasila was changed during the adoption of the 1945 Constitution due to objections from non-Muslim groups. For this reason, the first principle of Pancasila became "Belief in the One Almighty God", which was intended as a general recognition of the religious character of the Indonesian people. In the mid-1950s, this principle again was subject to debate between Islamist and nationalist groups, but in the end remained in its 1945 version since no new agreement was reached.

The political power of the Islamist camp declined dramatically when *Masyumi* was dissolved in 1960. The Islamists' hopes of rising up and becoming a political force again during the New Order, were disappointed due to the New Order's restrictive policy on all religions, and political Islam in particular. The New Order aimed to de-Islamise existing political parties. Pancasila was emphasised as the sole national ideology and politically influential Islamist groups ceased to exist during this period. The new Islamic movements that emerged under the New Order were of a civil-democratic nature and did not relate to any particular political party, especially not the old Islamist camp. These new movements, which aimed to establish a civil society oriented towards justice, freedom, and social autonomy, played a major role in the democratic transition of the Reformation Era.

Pancasila is a dynamic institutionalisation of Indonesian secularity. It is a joint agreement resulting from the need to address the issue of religious and ethnic diversity. It establishes a form of secularity for the sake of national unity in order to achieve progress, and particularly independence and social welfare.

Laws related to religion and especially to Islam mainly pursued three goals: (1) unifying the laws that apply to Muslims; (2) maximising the economic potential of Muslims; (3) protecting and facilitating religious life. These three objectives are secular and pursued by the state as a secular institution.

The three main periods of Indonesia's history show that democratic political regimes have been more responsive to Islamic law than authoritarian regimes. The authoritarian regimes strongly dominated boundary-making between state and religion, while under the democratic regimes, the boundaries have been the subject of negotiations and been dynamically influenced by the respective constellation of socio-political forces. The idea of secularism and a well-aimed secularisation process consequently applies better to the authoritarian regimes, while the democratic regimes have even been spaces of religious revival and increasing religious impact on the state.

Although the existence of state laws derived from Islamic law in Indonesia is usually seen as a reflection of Islamist groups' successful efforts to fight for the application of Islamic law, the incorporation of Islamic law actually enables the state to limit or even alter its legal substance and its legal enforcement. Furthermore, a person's obedience to Islamic law in this way is no longer based on religious teaching but on the fact that it has become state law. Therefore, the regulation of Islamic law in state law actually leads to the secularisation of Islamic law.

Bibliography

Ahmad, Amrullah et al. *Dimensi Hukum Islam Dalam Sistem Hukum Nasional*. Jakarta: Gema Insani Press, 1996.

Alfian. *Pemikiran Dan Perubahan Politik Indonesia*. Jakarta: PT. Gramedia Pustaka Utama, 1992.

Alfitri. "Putusan Mahkamah Konstitusi Sebagai Tafsiran Resmi Hukum Islam di Indonesia." *Jurnal Konstitusi* 11, no. 2 (2014): 296–314.

An-Na'im, Abdullahi Ahmed. *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge, MA: Harvard University Press, 2008.

Anshari, Endang Saifuddin. *Piagam Jakarta 22 Juni 1945*. Jakarta: Rajawali, 1986.

Arief, Abd. Salam. "Relasi Agama dan Negara Dalam Perspektif Islam." *Herméneia* 2, no. 2 (2003): 278–87.

Arjomand, Saïd Amir. "Secularisation through Legal Modernisation in the MENA-Region." In *Companion to the Study of Secularity*. Edited by HCAS "Multiple Secularities – Beyond the West, Beyond Modernities." Leipzig University, 2019. www.multiple-secularities.de/publications/companion/css_arjomand_legal-modernisation.pdf.

Asad, Talal. *Formations of the Secular: Christianity, Islam, Modernity*. California: Stanford University Press, 2003.

Azra, Azyumardi. *Islam Substantif*. Bandung: Mizan, 2000.

Bali, Asli Ü. and Hanna Lerner, eds. *Constitution Writing, Religion and Democracy*. Cambridge: Cambridge University Press, 2017.

Barton, Greg. "Indonesia: Legitimacy, Secular Democracy, and Islam." *Politics & Policy* 38, no. 3 (2010): 471–96.

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

Budiardjo, Miriam. *Partisipasi dan Partai Politik: Sebuah Bunga Rampai*. Jakarta: Yayasan Obor Indonesia, 1998.

Budiyono. "Hubungan Negara dan Agama Dalam Negara Pancasila." *Fiat Justicia* 8, no. 3 (2014): 410–23.

Burchardt, Marian and Monika Wohlrab-Sahr. "Multple Secularities: Religion and Modernity in the Global Age' – Introduction." *International Sociology* 28, no. 6 (2013): 605–11.

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

Bush, Robin "Regional 'Sharia' Regulations in Indonesia: Anomaly or Symptom?" In *Expressing Islam: Religious Life and Politics in Indonesia*. Edited by Greg Fealy and Sally White. Singapore: ISEAS, 2008.

Butt, Simon. "Islam, the State and the Constitutional Court in Indonesia." *Pacific Rim Law & Policy Journal* 19, no. 2 (2010): 279–301.

Cammack, Marc, Adriaan Bedner, and Stijn van Huis. "Democracy, Human Rights, and Islamic Family Law in Post Soeharto Indonesia." *New Middle Eastern Studies* 5, (2015): 2–33.

Dhakidae, Daniel. "Pemilihan Umum di Indonesia: Saksi Pasang Naik dan Surut Partai Politik." *Prisma 9*, (1981): 23–37.

Dressler, Markus. "Modes of Religionization: A Constructivist Approach to Secularity." Working Paper Series of the HCAS "Multiple Secularities –

Beyond the West, Beyond Modernities." Leipzig, February 2019.

Fealy, Greg and Sally White, eds.. *Expressing Islam: Religious Life and Politics in Indonesia*. Singapore: Institute of Sotheast Studies, 2008.

Fuad, Ahmad Nur. "Sekularisasi Politik (Pengalaman Amerika Serikat dan Dunia Islam)." *Salam* 12, no. 2 (2009): 83–100.

Goldstein, Natalie. *Global Issues: Religion and the State*. New York: Facts on File, 2010.

Habibie, Bacharuddin Jusuf. *Detik-Detik yang Menentukan: Jalan Panjang Indonesia Menuju Demokrasi*. Jakarta: THC Mandiri, 2006.

Hasyim, Syafiq. *State and Religion: Considering Indonesian Islam as Model of Democratisation for the Muslim World*. Berlin: Liberales Institut, 2013.

Hefner, Robert W. *Civil Islam: Muslims and Democratization in Indonesia*. New Jersey: Princeton University Press, 2000.

Hefner, Robert W. "Public Islam and the Problem of Democratization." In "Religion and Globalization at the Turn of the Millennium." Edited by José Casanova, special issue. *Sociology of Religion* 62, no. 4 (2001): 491–514.

Hilmy, Masdar. *Islamism and Democracy in Indonesia: Piety and Pragmatism*. Singapore: Institute of Southeast Asian Studies, 2010.

Hisyam, Muhamad. "Ki Bagus Hadikusumo dan Problem Relasi Agama – Negara." *Jurnal Masyarakat dan Budaya* 13, no. 2 (2011): 1–28.

Hosen, Nadirsyah. "Religion and the Indonesian Constitution: A Recent Debate." *Journal of Southeast Asian Studies* 36, no. 3 (2005): 419–40.

Hosen, Nadirsyah. "The Constitutional Court and 'Islamic' Judge in Indonesia." *Australian Journal of Asian Law* 16, no. 2 (2016): 1–11.

Ismail, Faisal. *Panorama Sejarah Islam dan Politik di Indonesia: Sebuah Studi Komprehensif*. Jakarta: IRCiSoD, 2017.

Jones, Gavin W. "Religion and Education in Indonesia." *Indonesia*, no. 22 (1976): 19–56.

Jung, Dietrich. "'Islam as a Problem': Dutch Religious Politics in the East Indies." *Review of Religious Research* 51, no. 3 (2010): 288–301.

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

Kholiludin, Tedi. *Kuasa Negara Atas Agama, Politik Pengakuan, Diskursus "Agama Resmi", dan Diskriminasi Hak Sipil*. Jakarta: RaSAIL Media Group, 2009.

Konstituante Republik Indonesia. *Risalah Perundingan Tahun 1959*. Jilid 1. Jakarta: Konstituante RI, 1959.

Künkler, Mirjam and Alfred Stepan, eds. *Democracy and Islam in Indonesia*. New York: Columbia University Press, 2013.

Künkler, Mirjam and Yüksel Sezgin. "The Unification of Law and the Postcolonial State: The Limits of State Monoism in India and Indonesia." *American Behavioral Scientist* 60, no. 8 (2016): 448–78.

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

Latif, Yudi. *Negara Paripurna: Historisitas, Rasionalitas, dan Aktualitas Pancasila*. Jakarta: Kompas Gramedia, 2011.

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

Liddle, R. William and Saiful Mujani. "Leadership, Party, and Religion: Explaining Voting Behavior in Indonesia." *Comparative Political Studies* 40, no. 7 (2007): 832–57.

Liddle, R. William. "The Islamic Turn in Indonesia: A Political Explanation." *The Journal of Asian Studies* 55, no. 3 (1996): 613–34.

Liviatan, Ofrit. "Faith in the Law – The Role of Legal Arrangements in Religion-Based Conflicts Involving Minorities." *Boston College International and Comparative Law Review* 34, no. 1 (2011): 1–37.

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

Madjid, Nurcholish. *Islam Kemodernan dan Keindonesiaan.* Bandung: Mizan, 1993.

Madjid, Nurcholish. *Tradisi Islam: Peran dan Fungsinya dalam Pembangunan di Indonesia.* Jakarta: Paramadina, 1997.

Mahfud MD, Moh. *Politik Hukum di Indonesia.* Yogyakarta: UII Press, 1998.

Mietsner, Marcus. *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation.* Singapore: Institute of Southeast Asian Studies, 2009.

Muslimin, Joko Mirwan. *Islamic Law and Social Change: A Comparative Study of the Institutionalization and Codification of Islamic Family in the Nation-States Egypt and Indonesia* (1950-1995). PhD thesis. Hamburg; 2005.

Nasir, Mohamad Abdun. "The Kompilasi Hukum Islam and Debates on Shari'a: Reconsidering Islamic Law in Indonesia." *al-ahkam* 22, no. 2 (2012): 197–212.

Nasution, A. H. *Menegakkan Keadilan dan Kebenaran I.* Djakarta: Seruling Masa, 1967.

Natsir, M. *Agama dan Negara dalam Perspektif Islam.* Jakarta: Media Dakwah, 2001.

Noer, Deliar. *Gerakan Modern Islam di Indonesia 1900–1942.* Jakarta: LP3ES, 1980.

Rahmatunnair. "Paradigma Formalisasi Hukum Islam di Indonesia." *Jurnal Ahkam* 12, no. 1 (2012): 99–108.

Romero, Alicia Cebada. "The European Court of Human Rights and Religion: Between Christian Neutrality and the Fear of Islam." *New Zealand Journal of Public and International Law* 11, no. 1 (2013): 75–102.

Rumadi. *Sekularisasi Politik Dalam Pemilu 2014.* Koran Sindo, 2014.

Safa'at, Muchamad Ali. *Pembubaran Partai Politik: Pengaturan dan Praktik Pembubaran Partai Politik Dalam Pergulatan Republik.* Jakarta: Rajawali Pers, 2011.

Sahal, Akhmad and Munawir Azis, eds. *Islam Nusantara: dari Ushul Fiqh Hingga Konsep Historis.* Bandung: Mizan, 2016.

Salim, Arskal and Azyumardi Azra, eds. *Shari'a and Politics in Modern Indonesia.* Singapore: Institute of Southeast Asian Studies, 2003.

Setiawan, Chandra and Asep Mulyana, eds. *Kebebasan Beragama Atau Berkepercayaan Di Indonesia.* Jakarta: Komnas HAM, 2006.

Sezgin, Yüksel and Mirjam Künkler. "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia." *Comparative Studies in Society and History* 56, no. 2 (2014): 448–78.

Stepan, Alfred C. "Religion, Democracy, and the 'Twin Tolerations'". *Journal of Democracy* 11, no. 4 (2000): 37–57.

Suadi, Amran and Mardi Candra. *Politik Hukum Perspektif Hukum Perdata dan Pidana Islam Serta Ekonomi Syariah.* Jakarta: Prenadamedia, 2016.

Sutomo, M. and Ahmad Zaenal Fanani, eds. *Menggugat Stagnasi Pembaruan Hukum Islam di Indonesia.* Jakarta: UII Press, 2016.

Tamney, Joseph. "Modernization and Religious Purification: Islam in Indonesia." *Review of Religious Research* 22, no. 2 (1980): 207–18.

Tanuwidjaja, Sunny. "Political Islam and Islamic Parties in Indonesia: Critically Assesing the Evidence of Islam's Political Decline." *Contemporary Southeast Asia* 32, no. 1 (2010): 29–49.

Titaley, John A. "Hubungan Agama dan Negara Dalam Menjamin Kebebasan Beragama di Indonesia." In *Kebebasan Beragama Atau Berkepercayaan Di Indonesia.* Edited by Chandra Setiawan and Asep Mulyana. Jakarta: Komnas HAM, 2006.

Törnquist, Olle. "Muslim Politics and Democracy: The Case of Indonesia." *Journal of Indonesian Islam* 1, no. 1 (2007): 1–17.

Utrecht, Ernst. "Religion and Social Protest in Indonesia." *Social Compass* XXV, no. 3-4 (1978): 395–418.

Vandenbosch, Amry. "Nationalism and Religion in Indonesia." *Far Eastern Survey* 21, no. 18 (1952): 181–85.

Wahid, Abdurrahman. *Islamu Islam Anda Islam Kita: Agama Masyarakat Negara Demokrasi.* Jakarta: The Wahid Institute, 2006.

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

Wardana, Amika. "Agama dan Penuaan Masyarakat Indonesia: Sebuah Agenda Penelitian." *Paper presented on AUD and Insula UNY Discussion.* March 19, 2014.

Weir, Todd H. *Secularism and Religion in Nineteenth-Century Germany: The Rise of the Fourth Confession.* New York: Cambridge University Press, 2014.

Weiß, Wolfgang and Afe Adogame. "The Interplay of Religion and Law in Germany." *Religio VIII*, no. 1 (2000): 41–64.

Widjaja, I. Wangsa and Meutia F. Swasono. *Mohammad Hatta: Kumpulan Pidato II.* Jakarta: Inti Idayu Press, 1983.

Wohlrab-Sahr, Monica and Marian Burchardt. "Multiple Secularities: Toward a Cultural Sociology of Secular Modernities." *Comparative Sociology* 11 (2012): 875–909.

Zuhri, Muh. *Hukum Islam dalam Lintasan Sejarah.* Jakarta: PT RajaGrafindo Persada, 1996.