

Nationalism and Pancasila State as Nation's Consensus: an Ideological Meeting Point (*Kalimah Sawa'*)

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Abstract: This study responded to nationalism issue, which has been criticized by radical groups that are deemed discordant with Islam. Indonesian nationalism ideology is the result of national compromise through conflicting interest. Timothy's theory stated that the competitive nature is striving to be synergy, reciprocal and complementary without any victory or defeat. Therefore, Indonesian nationalism is an ideology that is competitive but being complementary, so that Islamic groups and secular nationalists have no winner or loser. This competitiveness gets a meeting point in Pancasila (*kalimah sawa'*), in which it is as a prismatic ideology with a middle ground (*wasathiyah*), so both of them cannot be dichotomized. For the nationalist group, Pancasila is a form of a religious nation. Muslim groups assume that Pancasila is a portrait of a state nation based on monotheism. In this case, nationalism is in tune with Islam because it has been enclosed in *maqashid shari'a*. Without nationalism ideology, it will cause in various aspects of life. The radical Islamic group stated Indonesia as infidel country because Islamic law does not applied perfectly, such as stoning, *hudud* and *qishash*. However, these forms of law can be reduced through its benefit or *maqashid shari'a*.

Keywords: Nationalism, Pancasila, Nation, Consensus, Ideological, Meeting point

Introduction

In this contemporary age, transnational ideology has become an international political movement that tries to change the paradigm of the world with fundamental, radical and puritan religious ideologies. The paradigm they built was a new world order based on power on behalf of God and exclusive attitude. They reject human power since it has removed God's power. For this reason, they justify all means to achieve a goal on behalf of religion, such as forcing the will, committing violence, repression, terror, and considering other people infidel (*takfiriyah*) both for Muslim internally and non-Muslim.

Genetically, puritan, militant, extreme and radical Islamic ideologies have carried out movements and acts of violence, infidelity, apostasy, Muslim polytheism, and intolerance towards other groups. This movement is actually a continuation of the classical ideology of *Khawarij* people. The ideological movement has now been carried out by *Wahabi* people, *Salafi* and ISIS as the result of this movement often referred to as "Neo *Khawarij*." For example, *Wahabi*, who has misleading attitude, believes that a country is categorized as "*dar al-harb*" or war zone country if there is wickedness and sin even though its population is predominantly Muslim.

In the midst of poverty and underdeveloped society, radical groups do propaganda toward religious symbols on behalf of God in very interesting and fascinating ways. They fool people with the failure of the world's major ideologies, such as capitalism, liberalism, secularism and nationalism. These ideologies have created misery of the world community and destroyed morals. For instance, democracy as an infidel product has created social chaos in the world. Therefore, they invite all Muslims in the world to return to the religion doctrine in totality (*kaffah*). This system is reflected in *khilafah Islamiyah*, where it is the only way to solve today's problems in the world. The major challenge is of course the nation state.

In this case, radical group considers nationalism to be discordant with Islam. For instance, Sayyid Quthub stated that the national state had major challenges regarding the nature of nationalism. It was a lie that was embedded in the minds of Muslims. This understanding invites a person to love his country at first, but the main goal is to scatter Islam, limit each country with their respective territories, and *wala'* (loyal) to the citizens regardless of religious or faith differences ('Awaji, 1992).

In responding the problem of nationalism, the *maqashid shari'a* approach is crucial as a point of view to obtain the justification of religion appropriately. It is rational that N. J. Coulson, an orientalist of *fiqh*, said that the problems faced by Muslim jurisprudence over time are always related to determining the position between the religious norms with the dynamics of society (Coulson, 1987). The study wants to dissect Indonesian nationalism which is opposed by radical-fundamental-puritan Islamic groups, such as HTI, Salafi and others with the *maqashid* approach as a normative-theological foundation. Moreover, there have been frequent regional conflicts in Indonesia, such as in Tarakan, East Kalimantan, Ambon and so on. Conflicts occur due to the differences in ethnicity or religion which eventually threatens the disintegration of the nation. Furthermore, in this globalization era, information and communication are opened to each other throughout the world. In addition, reducing the main objectives of *shari'ah* as a representation of the highest values and principles contained in the sacred texts in which the current practical law must be subject to these values and principles, not to the interpretation only.

Moderate Nationalism: Nation's Consensus Ideology

Before Indonesian Independence Day on August 17, 1945, the system of government was kingdom. In the early 16th century Europeans, like Netherlands, came to Indonesia and changed the royal politics related to the struggle for hegemony. Interaction with Europeans has brought very significant changes through the access of new ideas, such as liberalism, democracy and nationalism. For the Indonesian people, nationalism can foster unity to achieve independence. Nationalism derived from two words; national and ism. The word national means nationality and people, whereas 'ism' is an understanding or teaching. So, nationalism is the understanding to love one's own nation and state or the awareness of involvement in a nation that potentially or actually achieve, maintain, and perpetuate the identity, integrity, prosperity, and strength of that nation together; the spirit of nationality (Lukman, et al, 1994). Hans Kohn stated, "Nationalism is an understanding that believes highest loyalty of individuals must be given to the national-state" (Kohn, 1984, p. 123).

At the beginning of Indonesian Independence Day, there was a rejection of an Islamic state establishment by some nationalists, especially non-Muslim, even though at that time Muslim was the majority. The ideological demands on the struggle of basic of Islamic state in the early independence of Indonesian until 1950s were indeed logical and reasonable because the political condition opened up opportunities to actively compete both Muslim and nationalism people. The Islamic struggle paradigm understands formally and legally because Islam is both a religion and a political system. If Islam was enforced to be substantive religion, it means that Islam was only related to teaching values. Whereas a new state has been formed and looking for a basic format of the state, it is an inevitability of Islam to be practiced on an ideological and symbolic level (Effendy, 1999).

The Indonesian nation has a very dynamic history. After the rise of Indonesian nationalism in the 20th century, there are a lot of indigenous society movements struggling against Dutch colonialism and demanding national independence. Inevitably, throughout the dynamics of the struggle of Indonesian nation, Islam has a very significant role for the revival of this country. It is not only binding unity, but also it is a symbol of equality of fate (in group) that against the foreign invaders and oppressors who come from other religions (Effendy, 1999). The Indonesian independence movement beginning in the early 20th century has shown polarization: a "secular" nationalist movement based on nationality, and an "Islamic" nationalist movement based on Islam. Both of them make the First Session of Dokuritsu Zyunbi Tyoosakai (Independence Preparatory Investigation Agency) which took place from May 29th to June 1st, 1945 different situation. The constituent assembly convened from November 1956 to June 1959, the issues that discussed in this assembly were issues of state forms, languages, flags, human rights, the foundation of the state, and others relevant constitutional issues. In addition to the basic problems of the state, all the forces of the united Islamic party faced it. The constituent assembly did not accept significant difficulties in completing constitutional tasks, even reaching 90% of the completed tasks.

In examining the relation between nationalism and religion, there is a quite serious antagonistic relationship between secular nationalists and Islamic groups. This tension can be ended temporarily, after both parties accept each opinion of their ideological and conditional desires. In quality, members of the Islamic group are coming from the secular nationalist and elder Javanese. The BPUPKI has 68 members consisting of 8 Japanese, 15 from the Islamic group, 45 from the secular nationalist and elder Javanese. Meanwhile 8 Japanese could be ignored, because they were not involved in the discussion, on the other hand the elder group supported the secular nationalist group. This explains that the Islamic group is dealing with a secular nationalist group who has unbalanced votes to discuss about the basis of a state (Endang, 1997).

According to Fachry Ali, a history is an approach used by Soekarno to analyze and develop his ideas as published in his article, "Refreshing the Understanding of Islam." Soekarno described the conditions of Islam in several Muslim countries such as Turkey, Egypt, Palestine, India and Saudi Arabia. Soekarno actually viewed there was no monolithic form of Islam, so that Islam appeared in a various one. Therefore, *ijtihad* is a necessity of all time (Ali, 1999). According to Soekarno, the stubbornness of Muslims can be solved by enlivening rationalism movements such as the *Mu'tazilah*. For him, even if Islam of Indonesia had established Muhammadiyah and Islamic Unity which tried to carry the rationalism of Muhammad Abduh, but he urged, "the way to explain al-Qur'an and hadith have not been 100% and have not yet been assisted with 100% of mind" (Soekarno, 1964).

Furthermore, Soekarno mentioned about the Islamic political system implemented by the Prophet Muhammad SAW and the *Khulafah ar-Rasyidun*, where Islamic politics was considered as old because it was produced in camel society whereas now is the airship society. Therefore, implementing camel society's political system in the midst of the airship one is certainly not suitable with the current development. In his article 'What Makes Turkey Separating Religion and State,' Soekarno believes that religion is a personal issue. By quoting Turkish researcher Frances Woodsmall, Soekarno admired Turkey to separate religion and state, so that it creates tendency of diverse enthusiasm among Turkish Muslims (Soekarno, 1964).

The idea of separating religion and state by Soekarno emerged a reaction from various Indonesian Muslim groups such as NU through Nahdlatul Ulama News (NOW) published by Hoofdbestuur of NU. This was published in two weeks as a representation of the views of NU as an organization. The NOW rejected Soekarno's view that the Islamic state was an undemocratic government which its whole policy was only accommodating Islamic interests, while the interests of minority religions society did not receive any attention. Soekarno's view considered to humiliate the Islamic tolerance. NOW regretted the view by saying, "unfortunately" Soekarno was too humiliating the Muslims "(Soekarno, 1964). The NOW convinced non-Muslims that "we are Muslims can convince the Christians, Buddhists and others, that according to Islamic law, each people is allowed to follow their religion and belief" (NOW, 1940). For Soekarno, separating religion and state was a necessity so that both can be developed and not

be dependence. Soekarno quoted the Turkish intellectual, Halida Hadib Hanoum, "if Islam is in danger and loses its influence, then it is not due to the government ignored it instead of the government takes care of it" (Soekarno, 1964).

Although there were no long clashes, both Islamic and Nationalists groups were able to develop relatively harmonious political relationship. The Nationalist Group was led by Soekarno. Meanwhile, once the Indonesian force given in December 1949, the Islamic groups began to show up their great strength in national politics. Masyumi, which was formed in November 1945, was the only political representative of Muslims and they succeeded to attract a large number of followers. Syahrir, the leader of PSII assumed that if general elections were held, then Masyumi would get 80% of the votes, which was a combination of modern Muslims (Muhammadiyah) who had a base in urban and orthodox (NU) with a large number of followers in the countryside (Effendy, 1999).

Seeing from the historical dimension, actually the NU scholars had applied moderate relations of state and religion (*wasathiyah*). For example, KH. Hasyim Asy'ari, the founder of NU, had paid attention to the relationship between nationalism and Islam with his Jihad Resolution to maintain Indonesian independence. At that time, General Commander Sudirman and Bung Tomo were the ones who often came to Tebuireng to get advice and fatwa of KH. Hasyim Asy'ari. As for one of the contents of Jihad Resolution states that Muslims especially NU members should lift up the weapons against the Dutch colonialists and their friends who want to re-colonize Indonesia and it is *fardu 'ain* to join Jihad for anyone within a radius of 94 KM (Effendy, 1999). This attitude shows that the relationship between Islam and nationalism in the view of the scholars is symbiotic instead of dichotomic as the views of nationalist groups.

One of the characteristics of moderate ideology is guaranteeing the freedom of the segment of life. Nationalism usually gives freedom to do everything in a plural society. In Islam, humans are free to choose to be faithful or infidel. Both have their own consequences in the afterlife. Humans should not force their beliefs on others'. Society should recognize freedom of faith without force and acknowledge faith and infidel as equal. Therefore, believers have their own right of belief and to clearly express their opinions (Fanani, 2010).

However, the freedom consists of general issues such as morality, interest and law. One Islamic taught believes that *al-amr bi al-ma'ruf wa an-nahy 'an al-munkar* as an implementation of *jeihad* in Islam. The concept shows that Islam has a big concern on human morality in society. It is permitted to limit one's freedom of speech to prevent any disputes in the society due to evil words or speech, as stated in Qur'an (4:148): "Allah does not like the public mention of evil except by one who has been wronged. And ever is Allah Hearing and Knowing." The freedom of thinking and speech is guaranteed by Qur'an (4:59): if you disagree over anything, refer it to Allah and the Messenger." The statement "different" or different opinion shows that there is a freedom of thinking or speech occurred in any forms (Abdillah, 1999). The formula derives from lines in Quran and hadiths and it is supported by other data in order to fulfill the sufficient level or *qat' i*, as stated by Zakariya> al-Ans}a>ri> "Naqli foundation sometimes delivers into a belief using the accumulation of other foundations" (al-Ans}a>ri>, 2009).

Factually, seeing from Indonesian geographical, demographical, and social condition, its plurality of ethnicity, religion, race and inter-group relations may become the factor of its disintegration. It is important to analyze them using the aspect of *maqashid syari'ah* to consider their benefit and damage to get religious justification. Muhammad Abu Zahrah opines that the main objective of Islam is benefit. All Islamic rules in Qur'an and Sunna have benefit (Abu< Zahrah, 1958). According to asy-Sya>t}ibi, Allah made Islamic rules to create benefit and avoid damage (*jalb al-mas}a>lih wa dar'u al-mafa>sid*), both in the world and hereafter. They were made not for the sake of its own but for beneficial aims (ad-Daraini>, 1975).

The notes have two aspects namely creating benefit and avoid damage (*jalb al-mas}a>lih wa dar'u al-mafa>sid*), both of which become an analysis framework to observe nationalism problem in Indonesia. From the aspect of benefit, nationalism itself had precious achievements in the history, such as the founding of Boedi Oetomo on May 20th and The Youth Pledge (Sumpah Pemuda) in 1928 having urgency value of unity. In addition, The Youth Pledge is an embryo of nationalism ideology by realizing the aim to establish an independence country. From the aspect if avoiding damage, the advance of science and technology leads to a potency of multidimensional problem such as religion and ideology (*h}ifz} ad-di>n*), politics and security (*h}ifz} an-nafs*), economics (*h}ifz} al-al-ma>l*) and socioculture (*h}ifz} al-'aql*). The problems may trigger disintegration which threatens the unity of Republic of Indonesia. It even may imply a separation act from the Republic of Indonesia to be an independence country. If Indonesia experience a disintegration, it will lose its integrity in the international world (*h}ifz} al-'ird*). A civil war will occur as happened in Middle East such as Egypt, Syria, Irak, Yemen and Libya.

They agreed that Indonesia would not be an Islamic country even though there would be no separation between religious and state matters. It did not mean that the Islamic group had no spirit to maintain Islamic law in the country, they chose to compromise by considering the potency of the East Indonesian separation. Therefore, the nationalism ideology did not come from nowhere, but as a result of conflicting interest in Indonesia. A compromise based on fiqh is *mubah*, or even obligatory to prevent bigger risk that is the Indonesia disintegration, as stated by fiqh rules, "*ad}d}jarar al-asyadd yuza>l bi ad}d}jarar al-akhaff*" (A bigger damage can be diminished by a smaller one) (al-Gha>zi, 1998).

The Dream of Pancasila State: An Ideological Meeting Point (*Kalimah Sawa'*)

The founder of Republic of Indonesia determined a unique and innovative choice on the relation between religion and state. The first principle of Pancasila, "Believe in the One and Only God" is accepted as a paradigm of a relation between state and

religion in Indonesia. Furthermore, a serious discussion and a high moral commitment were able to realize Indonesia based on "Believe in the Almighty God". Considering the uniqueness of Indonesian elements consisting of various ethnicity, religion, and race, it seems that our Founding Fathers faced difficulty in determining the form of the state in the global world (Kaelan, 2009). Therefore, the relation between state and religion in Indonesia is symbiotic. Religion is not needed as political institution and Islamic state has no clear foundation in Qur'an and hadith. Islam has to be represented functionally in life segments as an implementation of mercy to all creations. Such pattern becomes a bridge (*was|at|i>yah*) and it was done by the prophet Muhammad pbuh in building government pillars in Madina based on "Constitution of Medina." *Khulafah ar-Rasyidin* also continued the model of moderate government for three decades (Siradj, 1999).

Essentially, the suggestion of Sole Principle has triggered pros and cons during three years until it is included in Law number 5/1985 and Law number 8/1985 concerning the obligation for any organization in the society to do the reregistration, which is due on July 17, 1987. Civil society organization that refuses Sole Principle will not be registered with the consequence of guaranteeing openness and tolerance toward non-Muslim civil society in Indonesia as well as the concern on global issues. The ulemas or Islamic scholars keep on following the development of the era by sticking to the tradition and secure their *Sunni* identity. It is clear that the traditional Islamic view can play a creative role in a modern world (Bruinness, 1994).

The struggles of the Muslims in defending religion as the main element of the country that August 17, 1945 is not only the result of the civilians' combat, but the help of the God Almighty made it possible. Thus, since its establishment, the country is also made of Divine values. It can be proven by the fourth paragraph in the Preamble of the 1945 Constitution of the Republic of Indonesia, which firmly states: "...By the grace of God Almighty and urged by the lofty aspiration to exist as a free nation." Moreover, it is also supported by the statement written in the body of the 1945 Constitution of the Republic of Indonesia, Article 29 paragraph (1), that strengthens the acknowledgement of the country about the power of God Almighty: "The state is based on the belief in the One and Only God". Regarding this matter, KH. Said Ageil Siradj declares that denying the fact that the Unitary State of the Republic of Indonesia in under the guard of Pancasila and the 1945 Constitution of the Republic of Indonesia is none other than the act of ignoring all the orders given by the Prophet PBUH (Siradj, 1999). In Fiqh's (Islamic Law) perspective, any group stating that Indonesia is a *taguth* or merciless country can never be justified and it is considered as an act of treachery. Imam Nawawi asserts that treason towards the legitimate government (nationalism) is *haram* or forbidden although the government is categorized as atheistic and merciless (an-Nawawi, 2010).

According to Timothy's theory, competitive character should be taken care to be synergic and complementary without any winning or losing for each party. In this matter, Pancasila is an ideology that was created from the act of complementing or filling the gap for each other; thus, there is no party that is won or lost between the Islamic and secular nationalism groups. At the uttermost, the competitive issue found a meeting point based on the result of the consensus between the two groups with a very long process that is full of struggles. The result of this consensus is stated in the formulation of Jakarta Charter as the result of compromise between the two groups (Gunaryo, 1999). In this context, religion provides "a deep spirituality", and a state guarantees the religious life. Principally, Islam is one of the factors that creates the state's aspirations (*staasidee*) as in accordance with the principle "The state is based on the belief in the One and Only God." Hence, religions in Indonesia is the unity spirit of the Unitary State of the Republic of Indonesia.

To find out the position of Pancasila in Islam, it is necessary to relate it to Islam since radical group demanded to change the ideology of Pancasila to Islamic ideology. Here, religion takes part in the context of living as the citizens of a state where all religions possess an essential meaning for human life comprises two basic concepts that is religion within the meaning of 'what religion does' and 'what is religion'. The first definition refers to the function of religion for human life, and the second definition is the meaning of religion for human life. In Islamic perspective, as the Sole Principle in life as a part of the state, Pancasila is not contrasting with Islamic values and it highly upholds humanity because it has fulfilled various criteria. First, it respects a diversity of belief. Second, it puts a neutral stance among the followers of different religions. Third, it protects humanity rights. Fourth, it guards the rights and obligations based on the law that is agreed on (Ibn Bayyah, 2012). Moreover, moderate Islamic views has somehow influenced religious teachings in Indonesia for many years by using Pancasila as the fundamental principles comprise theology, *tasawwuf*, and practical action (Fiqh) (Muhajir, 2017).

Further, those reviews indicate that the relation between state and religion in Indonesian context has found the meeting point (*kalimah sawa'*) in Pancasila as the fundamental principles of Indonesia. For nationalist group, Pancasila is the realization of a nation that relates to religion. Meanwhile, for Muslim group, Pancasila is the reflection of state nation that is based on tawheed (Oneness of God) as has been mentioned in the first principle and it is in accordance with *maqasid sharia*. In this case, Pancasila is a prismatic concept; that is a concept that takes a good aspect from two contrastive concepts between secular nationalist and Muslim groups, which are united as a particular concept. Thus, it can be actualized with Indonesian dynamic reality. Hence, Islam and nationalism are two different sides of coin that mutually provides meaning and the two cannot be positioned through dichotomy. Nationalism must put diversity and plurality as the major segment that can create basic bond in a media called unitary state.

The Implementation of Islamic Law: An Eclecticism

The acceptance of nationalism concept as an ideology of Indonesia will imply on the prevailing law in the state that embraces nationalism, based on the ideal-constitution, Indonesia is a state of law that is based on the sovereignty of the people. However, in the practice, there are still some dependency on the development of politics and legal culture that is conditional. State

of law has orientation on the provisions of law and general principles as the fundamental principles. That orientation does not only depend on institution, but it must be oriented on truth that is basically and widely accepted since the legal process is the best method or way of solving problems and the principles are immortal (Lev, 1990). Thus, if there is a belief that law is placed above everything, then the society will adhere to it and use it to the maximum level.

Indonesian law is still centralized, and it is dominated by formal institutions such as executive, it is repressive, and it is formed to maintain status quo. It also reflects the interest of group that has a stronger power to offer, so it does not obtain any justice. The effort to create a law that is responsive and is able to reflect a sense of justice in society through a participatory process, not only a mere formality, is very hard to realize. These are caused by the conditions faced by the society in form of the management of process, political life, and material prosperity have not been fulfilled yet (Warrasih, 2001).

The strategy of Islamic law implementation in the domestic law level is through two stages namely sociological and juridical stage. The process of law preparation in Indonesia also consists of the two stages, sociological and juridical stage. During the sociological stage, a process of problem preparation occurs and it is ready to go to juridical agenda. Meanwhile, during juridical stage works related with law formulation are done. Since the preparation of law dealing with the acknowledgment and protection of certain interest and the allocation of right and obligation, the society which has particular interest will try harder to get involved in the preparation. The exchange of the House of Representatives (DPR) and the society in a form of the involvement of society in the House of Representatives could happen in the two stages and not only in the sociological stage (Rahardjo, 2006). For example, the draft bill on the elimination of sexual violence which becomes public matters and is urgently needed to establish by DPR to prevent any kinds of sexual violence and to protect the victims. However, the draft has three controversial points which prevent its establishment, namely the title of the draft, ambiguous definition, and the crime and its punishment. The head of PKS believes that the definition of sexual violence and the range of sexual crimes is the domain of liberal perspective which is not in accordance with the values of Pancasila, eastern religion and culture, and it is even considered permissive toward free sex and adultery act

Juridically, the implementation of Islamic law in national law system is still in the framework of national component consensus. Islamic law can be a positive law if it is agreed as a legal policy through legislation system. Islamic society through the House of Representatives has a wide opportunity to insert Islamic law into positive law (*taqni>n*) since it is a dominant group in the parliament. According to Achmad Gunaryo (1999), the legal both in a form of law or other forms is not value free or neutral. Its existence, especially national law, represents the outcome of various interests. However, in the process the winner is the one who has power or in the sociological term is the dominant group. Usually the government considers the definition of national law is a national law system. This national law system can facilitate Islamic society to formulate Islamic law into the national law. The formulation according to A. Qadry Azizy is called as eclecticism (the act of completing each other between Islamic law and positive law) (Azizy, 2002).

Therefore, the formulation of regulations cannot contain discriminatory elements. In fact, in Indonesia there are currently 154 regional policies issued in the provincial level (19 policies), in district / city level (134 policies) and in the village level (1 policy) between 1999 and 2009 that become a means of institutionalized discrimination, both in terms of its objectives and its impact. Similarly, there are currently 63 of 154 regional policies directly discriminate against women through restrictions of the right to have freedom of expression (21 policies regulate about the dress code), reduction of the right to protection and legal certainty for criminalizing women (37 policies on eradication of prostitution), abolition of the right to protection and certainty law (1 policy on the prohibition of *khalwat*), and waiver of the right to protection (4 policies on migrant workers).

Furthermore, there are radical Islamic groups who always voice that Indonesia is a pagan country. They think that Indonesia has not applied Islamic law in its entirety, such as stoning, *hudu>d* and *qis} as*. etc. Actually the law can be used to solve social problems. Paul Scholten states, "rechtsvinding" (legal discovery) is different from "wetstoepassing" (application of the law) (Scholten, 1954). If people only apply the law, it will be less able to solve social problems. This opinion can be used as a framework of analysis of nationalism which does not implement Islamic law in totality. Actually this can be done by the method of *tahshish*, as stated by the scholars of the modern fiqh, *Wahhab Khallaf*, namely *takhs} is} bi al-mas} lahah, takhs} is} bi al-maba> in 'asy-shari>' ah wa maqa> s} idiha> al-'a> mmah, and takhs} i> s} bi hikmah at-tasyri>* '(Khalifa, 1997).

These particular laws can be reduced (*takhs}i>s}*) with benefit through national agreement as a legal policy. Until now, the laws have not been applied as positive laws in Indonesia. If the laws are enforced in Indonesia, there will definitely be protests from other groups, such as nationalists, non-Muslims and the international society. It will only lead to ideological conflicts that ultimately threaten the integrity of the Republic of Indonesia (NKRI). This law is indeed a debate among Muslims internally but in legal formally, it has not been applied, so that the difference should not be debated or it was final. It is suitable with the fiqh rule, "*mukm al-hākim yarfa 'al-khilāf*" (the judge's decision can eliminate the difference) (az-Zuhailī, 1985). Therefore, Muslims are obliged to obey the leader even if the problem of *mubah juan* becomes an obligation as long as it contains benefits (Muhajir, 2015). This government policy will be realized if the benefits is for the society (*as-Sayu> t} i>*, 1999).

Conclusion

Based on the above explanation, it can be concluded that Indonesian nationalism ideology is the result of national compromise (*mu'ahadah wathaniyah*) through conflicting interests. Timothy's theory stated that the nature of competitiveness strives to be synergy, reciprocal and complementary without any victory or defeat. In this case, Indonesian nationalism is an ideology that

is competitive but being complementary, so that Islamic groups and secular nationalists have no winner or loser. This competitiveness gets a meeting point in Pancasila (*kalimah sawa*'), in which it is as a prismatic ideology with a middle ground (*wasathiyah*), so both of them cannot be dichotomized. For the nationalist group, Pancasila is a form of a religious nation. Muslim groups assume that Pancasila is a portrait of a state nation based on monotheism. In this case, nationalism is in tune with Islam because it has been enclosed in *maqashid shari'ah*. Without nationalism ideology, there will be damage (*mafasiid*) in various aspects of life. Then, nationalism brings nation's consensus implications in establishing Islamic law to be national law through eclecticism as a legal policy after going through the legislation system. This is where Muslims, through the representative council, have a great opportunity to incorporate Islamic law into positive law because they are the dominant group. The radical Islamic group stated Indonesia as an infidel country because Islamic law does not applied perfectly, such as stoning, *hudud* and *qishash*. However, these forms of law can be reduced (*takhshish*) through its benefit or *maqashid shari'ah*.

References

- 'Awaji, Ghalib ibn Ali. (1992). *Al-Mazhab al-Fikriyah al-Mu'a>s}arah wa Dawaa>riha> fi> al-Mujtama'a>t wa Mawqif al-Musli>m Minha*. Beirut: Da>r al-Fikr.
- Abdillah. Masykuri. (1999). *Demokrasi di Persimpangan Makna*. Yogya: PT. Tiara Wacana.
- Abu Zahrah. (1958). *Usju>l al-Fiqh*, Mesir: Da>r al-Fikr al-'Arabi.
- ad-Daraini, Fathi. (1975). *al-Mana>hij al-Usju>liyyah fi Ijtih>d bi ar-Ra'yi fi at-Tasyri>'* Damaskus: Da>r al-Kita>b al-Hadis.
- Al-Amidi, Abu al-Hasan. (1987). *al-Ihka>m fi Usju>l al-Ahka>m*. Beirut: Da>r al-Fikr.
- al-Ans}a>ri. Zakariya>. (2009). *Gha>yah al-Usju>}.l*. Semarang: ThoHa Putra.
- al-Ghazi, Abi al-Haris. (t. th). *al-Wajiz fi Id}a>h Qawa>'id al-Fiqh al-Kuliyyah*. Beirut: Da>r al-Qalam.
- Ali, Fachry. (1999). "Meneruskan Polemik Islam Soekarno" Kata Pengantar dalam Badri Yatim. *Soekarno. Islam. dan Nasionalisme*, Jakarta: Logos.
- Al-Juwaini. (t. th). *al-Burha>n Fi Usju>l al-Ah}ka>m*. Kairo: al-Wafa>' al-Mans}u>rah.
- An-Nawawi. (2010). *al-Minhaj Syarh Shahih Muslim ibn al-Hajjaj*. Beirut: Dar al-Ihya' at-Turats al-'Arabi.
- Anshari, Endang Saifudin. (1997). *Piagam Jakarta 22 Juni 1945: Sebuah Konsensus Nasional Tentang Dasar Negara Republik Indonesia (1945-1949)*. Jakarta: Penerbit Gema Insani Press.
- As-Sayu>t}i, Jala>l ad-Di>n. (1999). *Al-Asyba>h wa an-Nad}a>ir*. Beirut: Da>r al-Fir.
- Auda, Jasser. (2008). *Maqasid al-Shari'ah as Philosophy of Law: A system Approach*. London and Washington: The International Institut of Islamic Thought.
- Azizy, A. Qadri. (2002). *Eklektisisme Hukum Nasional*. Yogyakarta: Gema Media.
- az-Zuhaili, Wahbah. (1985). *al-Fiqh al-Islami> wa Adillatuh<*. Juz II. Beirut: Da>r al-Fikr.
- Basyir, Azhar. (1987). *Hukum Islam tentang Wakaf, Ijarah dan Syirkah*. Bandung: Al-Ma'arif.
- Bazo, Riyadh. (t.th). *Ahmiya>t Ta'li>m ad-Difa>' 'an al-Wat}an*. tp: tt.
- Bruinnessen. (1987). *NU, Tradisi, Relasi-Relasi Kuasa: Pencarian Wacana Baru*. Yogyakarta: LKiS. 1994.
- Coulson, Noel J. (1987). *The History of Islamic law*. terj. Hukum Islam dalam Perspektif Sejarah (Hamid Ahmad). Jakarta: P3M.
- Effendy, Bahtiar. (1999). *Islam dan Negara, Tranformasi pemikiran dan Praktik Politik Islam di Indonesia*. Jakarta: Paramadina.
- Endang, Saifudin Anshari. (1997). *Piagam Jakarta 22 Juni 1945: Sebuah Konsensus Nasional Tentang Dasar Negara Republik Indonesia (1945-1949)*. Jakarta: Penerbit Gema Insani Press.
- Faisal, BaktiAndi. (2006). *Islam and Nation Formation in Indonesia*. terjemahan Nawawi dan Syamsul Rijal. Jakarta: Churia Press.
- Fanani, Muhyar. (2010). *Fiqh Madani: Konstruksi Hukum Islam di Dunia Modern*. Yogyakarta: LKiS.
- Hakim, Lukman (Ed). (2008). *100 Tahun Mohammad Natsir : Berdamai Dengan Sejarah*. Jakarta: Republika Press.
- Hazairin. (1993). *Demokrasi Pancasila*. Jakarta: Bina Aksara.
- Ibn Bayyah, Abdullah. (2012). *Shina'at al-Fatwa*. Beirut: Markaz ad-Dirasat ar-Rabitah al-Muhammadiyah li al-'Ulama'.
- Ibn Must}afa. (t. th). *Tafsir Ruh al-Bayan*. Beirut: Da>r al-Fikr.
- Ibn Taimiyyah. (t. th). *Sadd azd-dzara>'i'*. Riyad; Da>r al-Fad}i>lah.
- Iqbal, Mohammed. (1966). *Membangun Kembali Pikiran Agama dalam Islam*. Jakarta: Gema Insani Press.
- Ismail, Faisal. (2009). *Islam and Pancasila: Indonesian Politics 1945-1995*. Jakarta: Badan Litbang Agama dan Diklat Keagamaan.
- Kaelan. "Relasi Negara dan Agama Dalam Perspektif Filsafat Pancasila". *Makalah. Yogyakarta*. Tanggal 1 Juni 2009.
- Khalla>f, Abd al-Wahhab. (1995). *'Ilm Usju>l al-Fiqh*. Beirut: Da>r al-Qalam.
- Kohn, Hans. (1984). *Nasionalisme, Arti dan Sejarahanya*. Jakarta: PT.Pembangunan.
- Lev. Diniel. (1990). *Hukum dan Politik di Indonesia; Kesenambungan dan Perubahan*. Jakarta: Gema Insani Press.
- Lukman, Ali Dkk. (1994). *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka. 1994.

- Muhajir, Afifuddin. (2015). *Fath} al-Muji>b al-Qari>b*. Situbondo: Ibrahimy Presss.
- Muhajir, Afifuddin. (2017). *Fiqh Tata Negara: Upaya Mendialogkan Sistem ketatanegaraan Islam*. Yogyakarta: IRCiSoD.
- Rahardjo, Sacipto. (2006). *Sisi-Sisi Lain dari Hukum di Indonesia*. Jakarta: Buku Kompas.
- Saragih, Bintan R. (1987). *Lembaga Perwakilan dan Pemilu di Indonesia*. Gaya Media Pratama
- Scholten, Paul. (1954). "Algemeen Deel" dari Air. C. Asser's *Handleiding Tot De Beoejening Van het Nederlandsch Burgerlijk Recht*. Zwolle : W.E.J.Tjeenk Willink.
- Siradj, Said Agiel. (1999). *Islam Kebangsaan: Fiqih Demokratik Kaun Santri*. Jakarta: Pustaka Ciganjur.
- Warassih, Esmi. (2001). *Pemberdayaan Masyarakat dalam Mewujudkan Tujuan Hukum*. Semarang: Badan Penerbit Universitas Diponogoro.
- Wildan, Muhammad (1999). *Student And Politics The Response Of The Pelajar Islam Indonesia (PPI) To Polotics In Indonesia*. Thesis. Leiden: Leiden University.