ANALYTICAL COMPARATIVE STUDY OF APPLICATION OF ISLAMIC LAW IN INDONESIA AND MALAYSIA

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ABSTRACT

The application of Islamic law can have different patterns and systems from one country to another, which is an impact of the openness of Islam in the formulation of laws while not contradicting the arguments that come from the Qur'an and Hadiths. So, it could be that in one country, a law that makes Islam its soul will be different from the laws in other countries even though it makes Islam its soul. And nothing is truer or more wrong between the two of them, as long as the law does not contradict the arguments of the Qur'an and the Hadith. This research will discuss the governance of Indonesia and Malaysia, and explain the socio-cultural-historical conditions of each country that are relevant to the discourse on the application of Islamic law in each of these countries. Furthermore, this study will analyze the prospects and possibilities to what extent the application of Islamic law can be applied in each country in the context of the current modern government system. The final stage and the purpose of this research will be to compare the real application of Islamic law in each country that has a different system of government, constitution and historical rationalization bases, and try to uncover the prospects of applying Islamic law in Indonesia and Malaysia for the future.

INTRODUCTION

Indonesia is an archipelago country with a population of different ethnic, cultural, ethnic and religious backgrounds. Indonesia adheres to a government system based on the 1945 Constitution and has the philosophy of Pancasila.

Even though Indonesia does not claim to be an Islamic country, the majority of its people are Muslims. The people of Nusantara archipelago first came into contact with the Muslims from the trade relations, where Arab and Persian ships containing Muslim traders who wanted to trade to China also made many trips that reached the archipelago. It was only since the end of the 12th century that Arab and Persian Muslims began to pay special attention to efforts to spread Islam in this region (Azyumardi, 2007).

Meanwhile, Malaysia is a Federal Kingdom located on the Malacca Peninsula and partly in the northern part of Kalimantan. Malaysia is a state with a form of government of a federal kingdom with 13 states, each of which is led by the Sultan and / or the Chief Minister. Unlike Indonesia, Malaysia officially declares Islam as the state religion. The socio-political condition of Malaysia is always accepting that its population is multi-communal so that there are very few political decisions / policies in Malaysia that are not influenced by the reality of the diversity of ethnicities and religions that exist there. The sultans of Malaysia were asked to be the main protectors of religion in the areas which were the subject of their power. Traditional Malay society views religion, traditional values, village and family as being integrated with one another. Thus, it is a common assumption in seeing that Malay cannot be separated from Islam. (Van Der Mehden, 1985) This situation is seen as a major reality in social and political life in Malaysia where the State has a strong attachment to ethnicity (Esposito & Voll, 1999).

Constitutionally, Indonesia and Malaysia do not claim to be Islamic countries, even though the majority of the population are Muslim. This also has an impact on the legal system which is used as constitutional guidelines by Indonesia and Malaysia, where the laws that live in post-independence Indonesian and Malaysian society are not Islamic laws. However, Islamic law as a historical reality can basically be found in practice in the territories of the kingdoms in the archipelago which would later become part of Indonesia and Malaysia. The Islamic kingdoms in Aceh, Demak, South Kalimantan, North Kalimantan, South Sulawesi, Maluku, and many others had implemented Islamic law as the only law in their respective territories long before the independence of Indonesia and Malaysia.

The application of Islamic law can have different patterns and systems from one country to another, which is an impact of the openness of Islam in the formulation of laws while not contradicting the arguments that come from the Qur'an and Hadiths. So, it could be that in one country, a law that makes Islam its soul will be different from the laws in other countries even though it makes Islam its soul. And nothing is truer or more wrong between the two of them, as long as the law does not contradict the arguments of the Qur'an and the Hadith. In Indonesia, Islamic law which has been applied in several realms of law can be divided into 2, namely 1) Islamic law which applies formally juridical (regulating humans with other humans and surrounding objects) which is then referred to as Muamalah law (civil), and 2) Islamic law which is normative in nature and has sanctions or the like in a particular society (Rofiq: 2000).

There are several examples, such as:

1. Law No.1 / 1974 concerning Marriage, later amended / added by PP No.9 / 1979 and PP No. 10/1983,
2. 2. Law no. 7/1989 concerning the Religious Courts, later amended / added by Law No.3 / 2006 and Law no. 50/2009,
3. Presidential Instruction No.1 / 1991: Compilation of Islamic Law,
4. Law no. 10/1998: Islamic banking,
5. Law no. 17/1999: Implementation of Hajj, later amended / added to Law no. 13/2008,
6. Law No.38 / 1999: Management of Zakat, then amended / added to the Law. No. 23/2011,
7. Law no. 44/1999: Implementation of Privileges for the Special Region of Aceh,
8. Law no. 18/2001: Special Autonomy for the Special Province of Aceh,
9. Law No.1 / 2004: Waqf, amended / added to PP. 42/2006,
10. Law no. 11/2006: Governing Aceh.

The application of Islamic law does not have to be a consequence that can only be achieved when a state formally proclaims itself as an Islamic State (for example, the Islamic Republic). Even in a pluralistic democracy, the application of Islamic law in the writer's view has the possibility to be applied in a limited number of contexts and is a healthy product of democracy that is achieved through a healthy democratic process. The Indonesian and Malaysian trajectories of Islamic politics are tracked in a comparative exercise that goes beyond the case studies to suggest that much of contemporary Islamic politics cannot be explained by reference to Islam alone, but to how Islamic identities and agendas are forged in contexts of modern and profane social contestation (Khoo Boo Teik; 2010).

This research will also try to explore the relationship that brings together key concepts of democracy with Islam, thereby eliminating the perception that democracy will always conflict with Islamic principles. This is based on that substantially, Islam actually carries values that are also substantially brought by democracy, such as the values of justice, equality, brotherhood, to tolerance.

The exercise reveals important convergences and divergences in trajectories that help to explain the complex historical processes which have shaped Islamic politics in these two cases and possibly beyond. It also reveals the entanglement of Islamic politics in very profane conflicts over power and tangible economic resources over time. In both countries a new form of Islamic populism has emerged as a major articulator of grievances against the secular state and perceived social injustices. However, the same historical processes have enabled the social agents of Islamic politics in Malaysia to contest state power more effectively than their counterparts in Indonesia (Vedi. R Hadis. 2011).

While philosophically, this research is based on the assumption that Islam as a religion is not always limited to a theological teaching, but as a teaching about divinity which also has its own concepts and teachings in regulating behavior between fellow humans in a single social order. Thus, this has the consequence

that Islam is not only limited to requiring its adherents to maintain their relationship with God theologically, but also to maintain their relationship with fellow humans based on theocentric-humanist teachings which are based on the main sources of Islamic teachings.

This research will discuss the governance of the two related countries and explain the socio-cultural-historical conditions of each country that are relevant to the discourse on the application of Islamic law in each of these countries. Furthermore, this study will analyze the prospects and possibilities to what extent the application of Islamic law can be applied in each country in the context of the current modern government system. The final stage and the purpose of this research will be to compare the real application of Islamic law in each country that has a different system of government, constitution and historical rationalization bases, and try to uncover the prospects of applying Islamic law in Indonesia and Malaysia for the future.

RESEARCH METHODS

The research method used in this paper is in the form of literature study which aims to collect data and information relevant to the topic, problem, object, and research focus. Information or related data can be obtained through books, journals, trusted scientific papers, theses, dissertations, encyclopedias, newspapers, magazines, internet, news broadcasts, or other sources that are considered relevant to the research. Through the literature study, the researcher will use all data and information to reference the thoughts that are relevant to the research focus.

While the approach used by the author in this study is a qualitative approach. In this study, the author uses qualitative research aimed at examining one or several populations / samples which will then be used to become research instruments and analyze the collected data both qualitative and statistical in nature aimed at testing the hypothesis proposed by the researcher. (Sugiyono: 2009) The qualitative approach seeks to present the social world along with the perspectives that exist in that world both in terms of concepts, behavior, conceptions, to issues related to humans and become the focus of research *(Ibid)*.

The analysis in the qualitative approach emphasizes the process of drawing inductive conclusions. In addition, the qualitative approach also analyzes the dynamics of the relationship between observed phenomena using academic logic (Azwar, 2007). The data collected in this study will focus or revolve around the application of Islamic law in Indonesia and in Malaysia, both historically, to factually, theoretically as well as its application in the field. The results of data collection from the 2 research objects here (Government of Indonesia and Government of Malaysia) will be analyzed for later comparison.

RESULTS AND DISCUSSION

Dynamics Of Discourse Regarding the Application of Islamic Law In Indonesia

After Indonesia's independence from colonialism, the idea of forming a state based on Islam has emerged in the dynamics of state and politics in Indonesia. The emergence of this idea is not a strange thing, considering that Islam has become the majority religion in Indonesia over the last few centuries, thus influencing the people's outlook on life to the fabric of society.

Meanwhile, in relation to the laws that live in society, Lodewijk Willem Christian Van Den Berg argues that it is possible for the law to refer to the religion (law) that a person adheres to. This theory is known as Reception in Complex. This theory states that "for every resident, his own religious law applies. If that person embraces Islam, it is the Islamic law that applies to him, as well as to adherents of other religions. So, based on the theory about the emergence of law in a social order, it is not unusual for Muslims everywhere when they feel that Islam is a law that binds themselves. (Tamam: 2017). Post-independence, this discourse emerged and manifested in the formulation of the Jakarta Charter which was originally intended to be the preamble to the Indonesian constitution. The Jakarta Charter contains seven words which will lead to a prolonged polemic, namely: "Deity with the obligation to carry out Islamic law for its adherents". The Jakarta Charter was also signed by nine people (known as the "Committee of the Nine") on June 22, 1945, namely:

1. Ir. Soekarno,
2. Drs. Mohammad Hatta,
3. Mr. A A. Maramis,
4. Abikusno Tjokrosujoso,
5. Abdul Kahar Muzakir,
6. H. Agus Salim,
7. Mr. Achmad Subardjo,
8. Wahid Hasyim,
9. Mr. Muhammad Yamin.

The Jakarta Charter itself can be seen as a compromise reached by the Islamists and the Nationalists of the founding fathers who sought to find a constitutional foundation that could unite elements of nationalism and Islam. However, the Jakarta Charter, which contains the seven words " *Ketuhanan dengan kewajiban menjalankan syari'at Islam bagi pemeluknya* " has resulted in rejection from the people of Eastern Indonesia whose majority is non-Muslim. This rejection is based on the concerns of those who may be marginalized and become second-class citizens if the Jakarta Charter is truly valid as the basis of the State. This rejection was accompanied by a "threat" that the regions in eastern Indonesia would leave Indonesia, which had just been formulated as an official sovereign state. On the basis of the considerations of the founding fathers who did not want division, they then followed up changing these seven words to become "*Ketuhanan Yang Maha Esa*". (Fogg: 2019)

Some groups of Indonesian Muslims are satisfied and do not object to these changes, but there are still some groups of Indonesian Muslims who still want the seven words of the Jakarta Charter to be included in the constitution again. The ideals of implementing laws and laws based on Islam at first also seemed to be given positive signals by Soekarno as the first President of Indonesia.

This was emphasized by Soekarno that if it is true that Islam is a religion that lives in the hearts of the majority of the Indonesian people, then the leaders of the ummah are welcome to direct their people to send delegations to parliament so that they can realize the laws produced by the people's representative institutions into Islamic law.

This positive signal was also given by President Soekarno to the Indonesian people who are Christian, where if they wish that all regulations in Indonesia are in line with the Gospel, they are also welcome to participate in healthy political contestation through people's representatives in Indonesia. In fact, after the debates at the BPUPKI and PPKI sessions, at least there have been three attempts to restore Islamic Shari'ah to a legal and formal position in the Indonesian constitution.

First, the dynamics of the discussion about the position of Islam and its syari'ah with the Indonesian state reappeared in the Constituent Assembly session in 1957-1959. The Constituent Assembly was formed after the 1955 elections and was aimed at formulating the Indonesian constitution. At the trial, several Islamic parties, including Masyumi, Nahdlatul Ulama (NU), the Indonesian Sarekat Islam Party (PSII) and Perti united in their efforts to make Islam the basis of the state. This has met with resistance from the "coalition" between the Indonesian Nationalist Party (PNI), the Indonesian Communist Party (PKI), the Indonesian Christian Party (Parkindo), the Indonesian Socialist Party (PSI) and several other smaller parties. In terms of votes, the Islamist camp is only a little different from the faction that rejects Islam as the basis of the state. Even so, a unanimous agreement failed to be reached even though the Islamists carried out various kinds of political lobbying, but it still resulted in a deadlock because there was no mutual agreement between the Nationalists, Islamists and Communists regarding the basis of the state. (Salim: 2008)

This also prompted President Soekarno to dissolve the Constituent Assembly (which was elected by the people) and then issue a Presidential Decree on July 5, 1955 which contained the dissolution of the Constituent Assembly and for the Indonesian Law to return to Pancasila and the 1945 Constitution. that the Jakarta Charter animates the 1945 Constitution and is an inseparable part of the 1945 Constitution (Kurniawan: 2011)

After the collapse of the New Order, hopes to amend the law for activist groups, ulama and Islamic politicians who want to return the seven words in the Jakarta Charter. Even after the fourth amendment to the 1945 Constitution, these efforts met with deadlock and failure. (Kurniawan: 2011). Subsequent efforts emerged during the New Order era, to be precise at the 1966-1968 MPR sessions. During this period, several Islamic parties again attempted to restore the Jakarta Charter to be part of the preamble to the 1945 Constitution. However, at this time, the

NU and Parmusi Parties no longer supported the return of the Jakarta Charter to be part of the preamble to the Law. (Salim: 2008)

At this time, NU considered that the presence or absence of the Jakarta Charter at the preamble of the Law was no longer so important. Several NU leaders viewed the Jakarta Charter as a source of Indonesian law, regardless of whether the Jakarta Charter took part in the preamble of the Law or not. In the view of the NU party leaders, the Jakarta Charter can be the basis for uniformity of law among Muslims, which is seen by NU as being far more important than simply obliging Muslims to implement syari'at. (Salim: 2008).

However, once again, the attempt to discuss the position of the Jakarta Charter again failed after the Armed Forces in the New Order forbade any discussion of the Jakarta Charter at the 1966 MPRS Session. little support. The third attempt emerged after the fall of the New Order, which was seen by many as a momentum that could be used to revise the 1945 Constitution. At the 2000, 2001 and 2002 MPR Sessions, the United and Development Party (PPP) and the Crescent Star Party (PBB) tries to provide a basis for formality for the application of shari'ah. At this time, Islamic parties were no longer interested in returning the Jakarta Charter to the 1945 Constitution, but focused more on trying to get the principle of formality for the application of Islamic syari'at through changes in Paragraph 29 of the Constitution. (Salim: 2008)

However, even though the seven words of the Jakarta Charter fail to be returned in the 1945 Constitution in the amendments to the 1945 Constitution, Islamic law can in fact still live in Indonesia for Muslims in Indonesia, even though it is within a limited legal scope, as the authors have mentioned. in the previous section. Only the Special Region of Aceh is the only area of the Unitary State of the Republic of Indonesia that has the privilege of obtaining legal certainty and formal recognition for implementing Islamic law through the enactment of Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh. In Law Number 44 of 1999 Article 3 it is explained that the Specialties of the Province of the Special Region of Aceh are in the form of:

1. Implementation of Religious Life,
2. Implementation of Customary Life,
3. Implementation of Education,
4. The role of ulama in determining regional policies.

After that, the next round which the author sees as an effort to implement Islamic law as a formally binding law on Muslims is the emergence of separate efforts from various regions to make Regional regulations inspired by the Qur'an and Sunnah, which are loosely often understood and known as "PERDA Syari'ah".

Dynamics Of Discourse Regarding the Application of Islamic Law in Malaysia

The discourse on the application of Islamic law in Malaysia has basically started since the formation of the Department of Religious Affairs through the State in

the Federation of Malaysia in 1948. At this time, every Muslim is required to submit and obey Islamic law under the jurisdiction of the syari'ah court headed by a religious judge. This lasted until Malaysia's independence, when the Malaysian government made Islam the official state religion and maintained the Malacca law on Islamic law as part of the law in force in Malaysia. (Dikuraisyin: 2017)

However, this does not necessarily mean that Malaysia applies Islamic law as a whole in the joints of their state and society. The Federal State remains the holder of power in the highest legal policy held and is the center of power and center in determining the direction of state legal policy, including having jurisdiction as owned by the syari'ah judiciary. This in turn makes Islamic law confined to limited contexts in the states. Meanwhile, the public judiciary institution held by the Federal State has a much broader scope than the shari'ah judiciary. (Dikuraisyin: 2017)

Basically, not too different from Indonesia, Malaysia actually has a historical reality in the application of Islamic law. The application of Islamic law in Malaysia can be traced back to the period of the Malay Kingdom which already has a legal codification, one example is the Trengganu Inscription which contains 10 Rules that must be obeyed by the Kingdom and its people. In addition, there is also a historical document of the Treatise of Kanun Law or the Short Law of Malacca which contains Islamic criminal and civil law. (Masykuroh: 2016)

Furthermore, during the British colonial phase, Islamic law was limited to laws relating to family institutions and several articles of religious offenses. Furthermore, during the early days of Malaysian independence, British legacy laws were still strong enough to influence the legal system in Malaysia, although in several states there were efforts to make new laws related to Islamic law so that they could form the legal-formal basis for the Islamic Religious Council, Ministry Religion, and the Shari'ah Court. (Ibid).

In the 80s, efforts to formulate Islamic law in various states began to be discussed again, especially those related to criminal law. Due to pressure from various parties, a committee of Islamic jurists was formed who were sent to various Islamic countries to study Islamic law and its application in each of these countries. The result is several laws, namely:

Islamic Law Administration:

a. Administrative Law Kelantan Court, 1982,
b. Shari'ah Court Law Kedah, 1983,
c. Legal Administration Law Islamic Federal Territories, 1985,
d. Family Law:

1) Islamic Family Law Islam Kelantan, 1983,
2) Islamic Family Law, Negeri Sembilan, 1983,
3) Islamic Family Law Malacca, 1983,
4) Islamic Family Law Selangor, 1984,

5) Islamic Family Law Perak, 1984,
6) Islamic Family Law Kedah, 1984,
7) Islamic Family Law in Federal Territories, 1984,
8) Islamic Family Law Penang, 1985,
9) Islamic Family Law Trengganu, 1985,
10) Criminal Procedure.

a. Islamicriminal Procedure Law Kelantan, 1983,
b. Civil Procedures;
a) Law of Procedure Islamic Civil Code Kelantan 1984,
b) Law of Procedure Islamic Civil Code Kedah 1984.
2. The Court Evidence Law Sharia Federal Territory
a. Baitul Mal: The Baitul Mal Law Federal Territory.

Islamic law in Malaysia also can be grouped into two, there are which concerns civil matters and some are related to the problem criminal. In the civil field include:

1. Engagement, marriage, divorce, cancel marriage or divorce,
2. Giving property or claims against the resulting assets case above,
3. The livelihood of the people below dependents, that child legal, guard and childcare,
4. The provision of waqf assets,
5. Other matters given power under the law.

In criminal matters set the following:

1. Persecution of wives and disobedience to husbands,
2. Having sex that is not normal,
3. Alcohol abuse,
4. Mistakes against adopted children
5. Other errors that have been further regulated in law. (Ibid)

The discourse of the implementation of Islamic law in Malaysia can be divided into two categories. First, Islamic law which applies formally. Islamic law in this first category is included in the jurisdiction of the state, both as a raw material and as a material.The first category of Islamic law makes Islamic law a positive law.

Second, Islamic law that applies normatively. Islamic law is the second category of Islamic law which deals with individual religious practice. Such as prayer, fasting and other individual worship. Based on sociological facts, the implementation and modification of Islamic law in Malaysia has obstacles, both from the conceptual aspect and at the practical level.

Among the obstacles were the attempts to marginalize the British colonialists and their followers who did not want Islamic law to enter the legal systems of the states. After that, when Muslim Malays came to power in the Malaysian states with their pluralistic politics that blended ethnic and Islamic religious elements, Islamic law found its perfect form in the laws and regulations of the

Malaysian states of Transformasi. Islamic law into the legislation in Malaysia is one of the efforts made by its leaders. They did this by forming an expert committee formed by the state government in Malaysia.

Comparison Of the Application of Islamic Law in Indonesia and Malaysia

Future Prospects of Islamic Law Application in Indonesia and Malaysia

In the Indonesian context, basically the existence of the Jakarta Charter is a fact that cannot be forgotten by Islamic activists who still harbor the ideals of implementing Islamic law in Indonesia. This is due to the reality that the laws in Indonesia have been colored by the breath of Islam. However, the challenges faced also often arise that hinder the struggle of Islamic activists and politicians who wish to formalize Islamic law for Muslims in Indonesia. This is due to the reality that the formalization of Islamic law in Indonesia must have a constitutional background that is recognized by the Indonesian government system. This is because the constitution is the basis for making laws in a country. So, if only the constitution in Indonesia can provide the possibility for the formulation and formalization of Islamic law for Muslims in Indonesia, then the future prospects in the formalization and application of Islamic law in Indonesia itself will have a strong legal foundation and background.

In addition, even though the Masyumi Islamic Party in the Constituent Assembly which was formed to formulate the basis of the state failed in its struggle to restore the Jakarta Charter as the basis of the law and make Islam the basis of the state due to President Soekarno's political steps to dissolve the Constituent Assembly, the dissolution of the Constituent Assembly and the issuance of a Presidential decree This still leaves hopes and "gaps" in the view of Islamic activists, scholars and politicians to formalize Islamic shari'ah in Indonesia so that it can become a legal basis for law and can be applied to Muslims in Indonesia. These hopes and "gaps" arose because of the existence of the word "to animate" in the Presidential Decree.

Groups holding this view consider that the word "animate" in the decree still opens up the possibility to formalize Islamic syari'at in state laws through constitutional channels. This is because the word "animate" can also be understood as "underlies". This also means that the meaning of Pancasila after the Presidential decree does not preclude the possibility of constitutional amendments that allow Muslims in Indonesia to formalize Islamic law in Indonesia so that it can exist and be applied to adherents throughout Indonesia. However, this is not without the pros and cons. Based on the explanation of Roeslan Abdul Gani, who was the person who was ordered by President Soekarno to formulate the Presidential Decree of 1959, that the meaning of "animating" the sentence "The Jakarta Charter Animates the 1945 Constitution and is a series of unity with the constitution" in the 1959 Presidential Decree is not changing the condition that the Jakarta Charter is not a part of the constitution. This, according to Gani, was strengthened by Muhammad Yamin's order asking that the word "series" be included in the decree. Thus, the existence of this word confirms that the Jakarta Charter does not automatically become part of the constitutional text. (Salim: 2008)

From the historical viewpoint, it can be understood that Islamic law is part of the life of Muslims in Indonesia, that already become the source of the formation and development of national law. Its existence is very strong and there are opportunities for the process of forming legislation through unification or codification in order to realize Islamic law or become national law. Islamic law in Indonesia has been described in the form of legislation, becoming the legal basis for its implementation under the ministry of religion and the religious court which has the same powers as other courts. It seems clear, like Law no. 7 of 1974 concerning marriage, Law no. 7 of 1989 concerning the Religious Courts, Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law. In addition, Muslims are increasingly aware of the existence of Pancasila which is the soul of the 1945 Constitution, which is the entrance to the formation of broader Islamic law (various fields of life) in the framework of fostering National law. This is a big asset in the prospect of applying Islamic law in Indonesia in the future.

CONCLUSION

The implementation of Islamic Law in Indonesia and Malaysia were belonged to the countries respectively. In the context of Indonesia, it had happened at the early of revolutionary era of independence. It started by the Jakarta Charter which implied the Islamic Sharia Law which proposed by the Islamist group, they were Nahdatul Ulama (NU), Indonesia Sarekat Islam Party (PSII), and Perti. The Islamist Group had a resistance from the Nationalist Group; the Indonesian Nationalist Party (PNI), the Indonesian Communist Party (PKI), the Indonesian Christian Party (Parkindo), the Indonesian Socialist Party (PSI) and several other smaller parties. Furthermore, the political landscape was having a deadlock among the Islamist, Communist, and Nationalist.

The effort of the implementation of the Islamic Law in Indonesia had a vary and dynamical issue. As the consequences of the deadlock and effect of the political scheme, Soekarno as the first president of Indonesia had to dissolution the Constituent Assembly which elected by the people and also contained an Islamic Law nuance within. The dissolve of the assembly began by issued a President Decree. The effort to restore Islamic Law from Jakarta Charter also happened in the collapse of New Order era, on the contrary from the previous era of 1945 the Parmusi and NU were not on the boat.

Although the restoration in the name of Jakarta Charter failed, it does not mean that no left behind due to the Islamic Law or its principle politically in Indonesia. Only the Special Region of Aceh is the only area of the Unitary State of the Republic of Indonesia that has the privilege of obtaining legal certainty and formal recognition for implementing Islamic law through the enactment of Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh. In short, in Indonesia, the implementation of Islamic Law is implemented at the specific region (Aceh Province), not holistically applied.

In the context of Malaysia, it has more massive Islamic Law implementation since the colonial era until current times. Started since the formation of the

Department of Religious Affairs through the State in the Federation of Malaysia in 1948. Malaysian government made Islam the official state religion and maintained the Malacca law on Islamic law as part of the law in force in Malaysia. Despite Malaysia can be categorized as the massive one, yet it does not mean Malaysia applied the Islamic Law as a whole. The Federal State remains the holder of power in the highest legal policy held and is the center of power and center in determining the direction of state legal policy, including having jurisdiction as owned by the syari'ah judiciary.

The phenomenon abovementioned from the country respectively defined that the implementation of Islamic Law has a limited context in the scope of government system, or even politics. Islamic law in Malaysia also can be grouped into two, there are which concerns civil matters and some are related to the problem criminal. The first category of Islamic Law makes Islamic law a positive law. Second, Islamic law that applies normatively. Islamic law is the second category of Islamic law which deals with individual religious practice. Such as prayer, fasting and other individual worship.

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