



HARMONIZATION OF ISLAMIC PRINCIPLES IN LAW IN INDONESIA

(Comparative Text of the Quran and Article 29 of the 1945 Constitution)

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Abstract; Indonesia is a constitutional country, its formation is based on legal principles and norms through a mutual agreement called the 1945 Constitution. The Constitution is one of the pillars of nationality in formulating the values and norms of the state. On the one hand, even though Indonesia is not a religion-based country, the 1945 Constitution substantially has very strong religious values and doctrines, especially Islam. Therefore, the author in this article will focus on analyzing how to harmonize religious values in the constitution through a comparative study of the text between the Qur'an and the content of the 1945 Constitution, specifically article 29 paragraphs 1 and 2. This research-based article uses normative juridical analysis with the type of literature research. The author traces sources in various literature, academic manuscripts, official documents, books of tafsir, then studied and then analyzed using the theory of legal harmonization. Conclusion of this article, the author finds that in principle there is a correspondence between the values of norms in article 29 paragraphs 1 and 2 of the 1945 Constitution with several verses of the Quran, for example in al-Ikhlās, al-Maidah, and al-Bāqarah. This connectedness can be seen in the spirit of prioritizing the values of justice and humanity.

Keywords: Harmonization, UUD 1945, Islam, Qur'an, Justice.

Abstrak; Indonesia merupakan negara hukum, pembentukannya didasarkan pada asas dan norma hukum melalui kesepakatan bersama yang disebut UUD 1945. Konstitusi merupakan salah satu pilar kebangsaan dalam merumuskan nilai dan norma negara. Di satu sisi, meskipun Indonesia bukan negara berbasis agama, UUD 1945 secara substansial memiliki nilai dan doktrin agama yang sangat kuat, khususnya Islam. Oleh karena itu, penulis dalam artikel ini akan fokus menganalisis bagaimana menyelaraskan nilai-nilai agama dalam konstitusi melalui studi perbandingan teks antara Al-Qur'an dengan isi UUD 1945, khususnya pasal 29 ayat 1 dan 2. Artikel berbasis penelitian ini menggunakan analisis yuridis normatif dengan jenis penelitian kepustakaan. Penulis menelusuri sumber dalam berbagai literatur, naskah akademik, dokumen resmi, kitab-kitab tafsir, kemudian dikaji dan selanjutnya dianalisis

menggunakan teori harmonisasi hukum. Kesimpulan dari artikel ini, penulis menemukan bahwa pada prinsipnya terdapat kesesuaian antara nilai-nilai norma dalam pasal 29 ayat 1 dan 2 UUD 1945 dengan beberapa ayat Al-Quran, misalnya dalam al-Ikhlās, al-Māidah, dan al-Bāqarah. Keterkaitan tersebut dapat dilihat dari semangat mengutamakan nilai-nilai keadilan dan kemanusiaan.

Kata Kunci: Harmonisasi, UUD 1945, Islam, al-Qur`an, Keadilan.

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A. Introduction

The state in principle has a mutual agreement in determining the values and norms of the state. Without a constitution, a state cannot be formed. As the basic law of the country, The constitution contains common norms and values to be used as a reference for every citizen. The constitution of a country is an important document containing values and norms that are mutually agreed upon by all citizens. Therefore, the Constitution is commonly referred to as a social contract or collective agreement which contains an agreement of all citizens to live in a country that is jointly owned. Indonesia itself has a foundation of statehood, namely Pancasila and the 1945 Constitution, which have been agreed upon by all groups of society.¹

Indonesia with its religious society has a very strong influence on beliefs and beliefs in religion and even affects the norms, values, culture, and daily behavior of its adherents. However, Indonesia is a pluralistic country. The diversity of Indonesian society is characterized by various differences, both horizontal and vertical. Horizontal differences include social units based on ethnicity, language, customs, and religion. Meanwhile, vertical differences are related to the sharp distinctions between the upper and lower strata in our society today, in social, economic, political, and cultural fields.²

In Indonesia, the freedom to practice religion and belief is guaranteed by the constitution, as a manifestation of the state's protection of the reality that society is diverse in identity.³ Constitutionally, this guarantee is found in

¹ Rahman Mantu. *Islam Dan Konstitusi : Analisis-Komparatif Aantara Teks Al-Quran Dengan Pasal 29 UUD 1945*. 16 (1) (2018). <http://dx.doi.org/10.30984/jis.v1i6i1>. hal. 644.

²Said Agil Husin Al Munawar, *Fikih Hubungan Antar Agama* (Jakarta: Ciputat Press, 2005), hal. VIII.

³ Otniel Ogamota Mendrofa, "Pembatasan Kebebasan Beragama Berdasarkan Teori Keadilan dan Hak Asasi Manusia", *Milthree Law Journal*, Vol. 1. No. 1, Maret 2024, 34. <https://doi.org/10.70565/mlj.v1i1.hal.2>

Article 28E of the 1945 Constitution, which explicitly states, "Every resident is free to embrace religion and worship according to their religion" (paragraph 1) and that "Everyone has the right to freedom of belief, in accordance with their conscience" (paragraph 2). This recognition by the state is further reinforced in Article 29 paragraph 2 of the 1945 Constitution, which states that "The state guarantees the freedom of every resident to embrace their respective religion and worship according to their religion and beliefs." In relation to the content of the previous articles, Article 28I of the same constitution states that the freedom of religion and belief is part of "human rights that cannot be diminished under any circumstances" (paragraph 1). Based on the recognition and guarantees of the state in the above articles, this document emphasizes, "Every citizen has the right to be free from discriminatory treatment on any grounds and is entitled to protection against such discriminatory treatment" (paragraph 2).

The spirit of the constitution to protect and give freedom of its citizens in embracing confident and religious in accordance with principles in Islam which have a solid foundation in values and teachings against pluralism, because theologically religious freedom is transcendent (sourced from God).⁴ Religious pluralism is a historical reality that cannot be denied by anyone. Religious pluralism will be able to give birth to a beautiful grace, where one can fill in the empty sides of the other, so that there are elements of complementarity and mutual understanding. Islam, through the holy book of the Quran, provides the value of awareness of religious pluralism towards

⁴ Fatur Rahman, Afi Nurul Febriyanti, "Jihan Hidayah, Kebebasan Beragama Sebagai Bagian Dari Hak Asasi Manusia", *Aliansi: Jurnal Hukum, Pendidikan, dan Sosial Humaniora*, Vol. 1. No. 3, (2024): 316. <https://doi.org/10.62383/aliansi.v1i3.hal.229>.

mankind. The principles and values of Islam from the beginning by the founding fathers were used as the main source in the formulation of the constitution, starting from the debate in the constituent assembly about the abolition of the seven words in the Jakarta charter. The Jakarta Charter is a term given by Mohammad Yamin which was signed on June 22, 1945 as a form of compromise between Islamic nationalists and secular nationalists. As stated in the first precept of Pancasila, namely "Divinity with the obligation to carry out Islamic shari'ah for its adherents".⁵ which took effect on July 5, 1959, when the presidential decree was issued, in the presidential decree it was stated that "We believe that the Jakarta Charter on June 22, 1945 animates the 1945 Constitution and is a series of unity in the constitution. This clearly shows the nuances of compromise between the national group and the Islamic religious group. So that Indonesia since independence until now, has not become a secular country and is not an Islamic country. However, there has been a fusion between the two.

Substantially, Islamic values are found in many laws and regulations, the values of monotheism, humanity, unity, deliberation and justice can be seen in the preamble to the 1945 Constitution. Meanwhile, in the body of the 1945 Constitution can be found in article 29 paragraph (2), namely the state guarantees the freedom of each resident to embrace their respective religion and worship according to their religion and belief. Even George McTurnan Kahin, a western scientist who is an expert and has great intentions on the problem of movement in Indonesia. In his contribution as a tribute to the 70th anniversary of M. Natsir, as a professor at Cornell University, USA, mentioned

⁵ Firdaus . A. N, *Dosa-Dosa Yang Tak Boleh Terulang Kembali* (Jakarta: Pedoman Ilmu Jaya, 1992), hal. 46.

that the articulation of Islamic Sharia in the Constitution of the Republic of Indonesia has not only stopped at the theoretical and conceptual level, but has also entered the shutter of the practical political level.

Departing from the above background, the author in this article will discuss how to harmonize the Islamic principles in the Constitution of the specific State study of the text of the Qur'an verses with article 29 Paragraphs 1 and 2 of the Constitution of the Republic of Indonesia using the theory of legal harmonization. The term legal harmonization itself appeared in a legal study in 1992 in Germany. In the study of legal science, there is a theory that is often used by researchers to examine the adjustment of regulations or the alignment of laws, legal principles, and legal norms with the aim of achieving proportionality. This theory is known as legal harmonization.⁶ The process of harmonizing (adjusting) the concept, substance and formulation of a draft of laws and regulations, both in the internal part of the draft (body and explanation), with existing laws and regulations and other drafts that are also being prepared, so as to form an integrated element and in line with or not with other laws and regulations.⁷

This research employs a normative legal approach based on literature studies that obtain secondary data from various literatures, laws and regulations, official documents, as well as interpretation texts.⁸ The analysis of legal materials was carried out by the author by exploring, analyzing, and finding all laws and regulations that regulate all aspects regarding the

⁶ Suhartono, "Harmonisasi Pertaturan Perundang-Undangan dalam Pelaksanaan Perundang-Undangan" (Disertasi: Fakultas Hukum Universitas Indonesia, 2011), hal. 94.

⁷ Ida Surya, Abdul Wahab, "Harmonisasi Peraturan Perundang Undangan dalam Mewujudkan Pemerintahan Yang Baik", *Jurnal Kompilasi Hukum* Volume 8, No. 2, Desember 2023; 111. <https://doi.org/10.29303/jkh.v8i2.hal.142>

⁸ Lexy Moleong, *Metode Penelitian Kualitatif* (Rosda Karya: Bandung, 2002), hal. 17.

fulfillment of the right to food so that from these laws and regulations several specifications of laws and regulations will be found that support the analysis of the discussion of the research results.

B. Discussion

1. Article 29 Paragraph (1) of the 1945 Constitution and the Value of Monotheism

As a democratic country and participating in guaranteeing human rights, the government as the law maker has the authority to regulate and protect national life. The government not only providing guarantees for every citizen to be free to choose their religion and worship according to their beliefs, but also protects the right to freedom as stated in Article 29 of the 1945 Constitution, with the hope that the implementation of the right to freedom does not conflict with the right to freedom of others, let alone interfere with or damage the human rights of others or other religious communities.⁹Article 29 paragraph (1) explains that the state is based on the one and only God. This is in accordance with the doctrine of the Koran:¹⁰

Say: He is Allah, the Almighty. (Q.S al-Ikhlās Ayat 1)

⁹ Febri Handayani, “Konsep Kebebasan Beragama Menurut UUD 1945 Serta Kaitannya dengan HAM”, *Toleransi: Media Ilmiah Komunikasi Umat Beragama*, Vol 1, No. 2. (2009); 222. <http://dx.doi.org/10.24014/trs.v1i2.hal.453>

¹⁰ Lajnah Pentashihan Mushaf Al-Qur'an, *Al-Qur'an dan Terjemahannya Edisi Penyempurnaan 2019*, Tim Penyempurnaan Terjemahan Al-Qur'an (2016-2019).

The 1945 Constitution fundamentally guarantees the implementation of beliefs and religions in accordance with the principles and regulations of each respective belief. Based on this, the state provides freedom for its citizens to determine how to conduct their relationship with God, in accordance with the religion or belief they adhere to, while maintaining balance in order to create tolerance between adherents of religions and those of beliefs.¹¹

The philosophy of the one and only God contained in this article can be understood as identical to monotheism, which is the core of Islamic teachings, with the understanding that Islamic teachings provide tolerance, freedom and the broadest possible opportunity for adherents of other religions to practice their respective religious teachings. In addition, the philosophy of monotheism formulated as the one and only God is able to cover all legal issues in the fields of humanity, society, and state. The freedom to embrace a religion or belief will be meaningless if it is not accompanied by the freedom to worship according to the religion or belief that is adhered to.

Syafii Maarif emphasized that the attribute "the one and only" shows that the concept of divinity in the 1945 Constitution is a reflection of the teachings of monotheism. This can be strengthened by an assumption, namely that if the majority of the Indonesian people are not Muslims, then it is certain that the foundation of our state will not recognize the principle of divinity.¹²

¹¹ Setiardja Gunawan, *HAM Berdasarkan Ideologi Pancasila*, (Yogyakarta: Kanisius, 1993), hal. 12.

¹² Ahmad Syafii Maarif, *Islam dan Masalah Kenegaraan; Studi Tentang Percaturan dalam Konstitusi* (Jakarta: Pustaka LP3ES, 1985), hal. 110.

It can be said clearly that Indonesia is different from other secular countries, in the life of our country we must internalize and realize universal principles (humanity, unity, democracy, and justice) with full conviction that all of these are manifestations of our faith in Allah SWT, the one and only God. In line with our total surrender in prayer:

"I present my body and soul to the creator of heaven and earth, with complete sincerity and resignation, without associating it (with other mortal goals). Indeed, my prayers, my worship, my life and my death belong to Allah, the Lord of the worlds; there is no partner for him, so I am commanded and I am one of those who submit."

This means that if we fight for humanity, unity, democracy and justice, it is not merely because of worldly profit and loss calculations, but we do it fully with appreciation as the command of Allah, the all-powerful God. This is a very solid moral foundation.

Integration of the spirit of divinity and other human values is absolutely essential for us to live in the life of humanity in this post-modern century. On the one hand, national societies, say in the West, which overemphasize the Anthropocentric dimension, only consider the values of humanity and life by denying the divine dimension; on the other hand, national societies, say in the Islamic world, which are overly Theocentric, only want to consider the divine dimension by belittling the values of humanity and life. The history and understanding of humanity in the future require a comprehensive and balanced understanding and practice between the two clusters of divinity and humanity. Our Constitution has articulated it precisely.

2. Contextualization of Freedom of Religion in Article 29 Paragraph (2) of the 1945 Constitution

With this article it is very clear that all religions before the state are treated equally. Thus it is not in the substantive-theological sense that the state judges the religions embraced by its citizens as all true/haq. Nor is it the other way around, that all religions embraced by its citizens are false and false. Such judgment is clearly not the authority of the state. This article applies in the sense that the religions embraced by each community as citizens must be treated and treated equally.

This norm is actually universal, not only for religious groups but also others, including political parties or tribes, the affirmation of the Quran regarding fair treatment without discrimination must be truly referred to:

"O you who believe, be those who always uphold (the truth) for Allah's sake, be just witnesses. and never let your hatred of a people lead you to act unjustly. Be just, because justice is closer to piety. and fear Allah, for Allah is Knowing, for indeed Allah knows what you are doing." (al – Māidah Ayat 8).¹³

Also in the spirit of justice, the State is obliged to ensure that there is no blasphemy in the name of religion or belief by adherents of other religions. Let everyone believe in his religion as the most true, even the only one that is true, without having to blaspheme the religion and/or beliefs of others as false or heretical. The norm is the same: if you don't like your religion being insulted, then don't insult someone else's religion. On the other hand, if you like others to respect your religion, then respect the religion of others. The Koran teaches:

¹³ Lajnah Pentashihan Mushaf al-Qur'an, *al-Qur'an dan Terjemahannya Edisi Penyempurnaan 2019*, Tim Penyempurnaan Terjemahan al-Qur'an (2016-2019).

"And do not curse the offerings they worship other than Allah, for they will curse Allah beyond the limits without knowledge. Thus We make every people consider their work well. then to the Lord they returned to them, and He preached to them what they had done before." (al- an`Am Ayat 108)¹⁴

Regarding the truth believed by each religious community, the State also has no right to intervene. What is exclusively true according to Islam and must be obeyed by the ummah is the business of Muslims themselves, as well as other religions. Let it be the household affairs of each community of adherents. It is not in place that the State must be involved or involved through policies (laws or regulations) along with its repressive apparatus, for example to force Muslims to perform the five-time prayer and punish anyone who leaves it; or forcing Christians to go to church every Sunday, or forcing Hindus to go to temples, and Buddhists to temples.

The state as an inclusive public institution is only obliged to protect the rights and interests of all its citizens, including the right to believe and practice their religious teachings, without discriminating between adherents of one religion and adherents of another. If it turns out that adherents of certain religions are not serious about practicing their religion, then it becomes a personal matter for the person concerned. In the Qur'an it is affirmed that every human being has complete freedom to practice religion:

"There is no compulsion to (enter) the religion (Islam); Indeed, it is clear that the right path is from the wrong path. Therefore whoever disobeys Thaghut and believes in Allah, then he has indeed held on to the very

¹⁴ Lajnah Pentashihan Mushaf al-Qur'an, *al-Qur'an dan Terjemahannya Edisi Penyempurnaan 2019*, Tim Penyempurnaan Terjemahan al-Qur'an (2016-2019).

strong rope that will not break. and Allah is the Hearer and the Knowing ”. (al-Baqarah Ayat 256)¹⁵

In the tafsir of Al Maraghi it is stated that Islam is offered to humans without coercion. Because faith is a statement of awareness and obedience that can be achieved by delivering arguments and proofs of truth. A person is not allowed to force a Muslim out of his religion.¹⁶

With this interpretation, it is related to paragraph (2) of article 29, namely the holy books that contain the same sharia can be used as a common basis for the development of national law. Meanwhile, the difference can be used as a source of law that applies to adherents of their respective religions.

Embracing religion or choosing religion is one of the freedoms of the five basic human rights in Islamic nomocracy, namely; (1). Freedom of religion, (2). Freedom of thought and opinion. (3). Freedom to own property. (4). Freedom to try and choose work and. (5) Freedom to choose where to live.¹⁷

Like freedom in other fields, Islam is completely tolerant of the freedom to adhere to a religion. This is based on three main reasons, namely:

1. Islam never forces a person to enter Islam from the religion he was previously adhered to.

¹⁵ Lajnah Pentashihan Mushaf Al-Qur'an, Al-Qur'an dan Terjemahannya Edisi Penyempurnaan 2019, Tim Penyempurnaan Terjemahan Al-Qur'an (2016-2019).

¹⁶ Al Maraghi Ahmad Mustafa, *Tafsir Al Maraghi*, alih bahasa: Bahrin Abu bakar, (Semarang: Toha putra, 1993), hal. 28.

¹⁷ Muhammad Tahir Azhari, *Suatu Studi Tentang Prinsip-prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah dan Masa Kini*, (Jakarta: Bulan Bintang, 1992), hal. 97.

2. Muslims are instructed to discuss religion with other religions in order to obtain rational arguments.
3. The faith that is embraced is a belief, not something that follows.

What has been emphasized above regarding the freedom of every citizen to embrace and practice their religion also applies to their beliefs. What is meant by religion in paragraph (2) of article 29 of the 1945 Constitution is the parent belief; Islam, Christianity, Buddhism, Hinduism, Confucianism and so on. While what is meant by "belief" is what is in Islam called a sect, sect or sect in Christianity. So this is in Islam, for example, Sunni, Shia, Khawarij, etc. In Sunni there are adherents of the Shafii, Hanfi, Maliki, and Hambali madhhabs. In Christianity there are sects of Catholicism, Protestantism, Orthodoxy, Mormonism and so on. In Protestantism there are Presbyterians, Lutherans, Methodists. Also in Hinduism, Buddhism, each has a different belief system. In essence, in all religions there is always a flow of beliefs that are not singular, so the position of the State must be the same; fair, proportional, non-discriminatory to differences in beliefs (Sects, Sects, Sects, Denominations).¹⁸

This is why in the text of our constitution article 29 affirms: "The state guarantees the freedom of each citizen to embrace his or her own religion and worship according to religion and belief". That is, if the differences between religions that are more basic and principled are guaranteed and respected, let alone the differences of the same school or sect of one religion and are not fundamental, of course it is more

¹⁸ Masdar Farid Masudi, *Syarah Konstitusi: UUD 1945 Dalam Perspektif Islam*, (Jakarta: Alvabet, 2010), hal. 158-159.

guaranteed and respected. This is civilization and wisdom in religion that is to be encouraged by the last sentence paragraph (2) of article 29 of the 1945 Constitution.

C. Conclusion

So in the end, through the 1945 Constitution it is very clear that the State must play a role in the life of religion and its people, it revolves around two important points: First, the preventive role in terms of keeping the relationship between people of different religions and beliefs in harmony, not falling into horizontal conflicts that can destroy the unity of the nation and the State. Second, the role of promotive to implement and advance universal noble values that are favored by adherents of their respective religions. From the perspective of religions, the State as a secular-secular institution will get its spiritual meaning, strengthen its existence and be defended by all religious people.

Looking at the description above, by presenting the verses of the Qur'an and comparing it with the text of article 29 of the 1945 Constitution, it can be concluded that Islam through the Qur'an has accommodated all the values enshrined in Article 29, both paragraphs 1 and 2 of the Constitution of the Republic of Indonesia. There is no contradiction between chapter 29 and the Quran. It's just that many of us sometimes misinterpret so that it has an impact on a peaceful and tolerant religious life.

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