

THE LEGAL POLITICS OF RELIGIOUS MODERATION IN INDONESIA: RESPONSIVE OR REPRESSIVE?

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ABSTRACT

This paper aims to identify the typology of religion and state relations in Indonesia, and to analyze the characteristics of state policy of law in response to religious moderation in Indonesia. The results show that the values of radicalism and religious moderation are in fact extremely contradicts one another. Indonesia which is based on Pancasila determines that the typology of religion and state relations is symbolic of mutualism. The two entities, both state and religion, are an inseparable unit. Both complement and support each other. Meanwhile, the characteristics of legal politics applied by the Indonesian state regarding religious moderation are participatory responsiveness. The policy of law was set to maintain the unity and integrity of the country based on unity in diversity (Bhineka Tunggal Ika).

Keywords: Legal Politics, Religious Moderation, Religion and State Relations, Pancasila, Indonesia.

INTRODUCTION

Challenges in the Globalization Era that arise in the world are extremism, radicalism, intolerance, and exclusivism (Mansur & Husni, 2020). As a result, issues related to religious harmony have become the attention of the international community (García & Talavero, 2019), so that religious tolerance must always be promoted (Zuo'an, 2013). Radical Islamic movements in Indonesia are quite unique, because they spread the seeds of radicalism widely in various places, such as in the religious studies tarekat communities (Azwar, 2018), majelis taklim (Sajarah & Mahampang, 2017), campuses (Arifianto, 2019) and schools (Ibda, 2019). These groups ask Muslims to return to the pure teachings of Islam. In addition, they also fight against regimes that are considered secular and deviate from religion and (Wibowo, 2019) consider their teachings to be the truest. Radical muslim groups are synonymous with fundamentalist Muslim groups. They tend to justify violence (Deckard & Jacobson, 2015), with the jargon calling for good and preventing evil. These groups have become popular on social media (Duile, 2017) and in the real community (Damayanti et al., 2003). The stigma of terrorism is often labeled against Muslims. The negative impact, Muslims in some places have become targets of discrimination to access jobs (Valfort; 2020).

In Indonesia, the radicalism movement that triggers religious intolerance is driven by Hizbut Tharir Indonesia (Burhani, 2017) and the Islamic Defenders Front (Facal, 2020). These

groups want Indonesia, whose democracy is based on Pancasila, to be replaced by a country with a Khilafah system (Al-Amin, 2012). This condition triggers radicalism and intolerance (Petrû, 2015) in Indonesia. The potential for radicalism and intolerance in Indonesia is enormous. This fact is confirmed by Sidney Jones. He said the threat of terrorism and radicalism in Indonesia is real (Galamas, 2015). In addition, a survey conducted by the Wahid Foundation shows that as many as 108 million Indonesian Muslims are not radical, around 11 million Indonesian Muslims are willing to be radical, and 600 thousand Indonesian Muslims have been involved in radical actions (Huda, 2017).

Studies on radicalism and religious moderation have been carried out, for example, Y. Kawagung said that the study of religious tolerance in this century has entered the culmination point of saturation, no longer relevant to technology 4.0. Tolerance is gradually degraded in its implementation because; it is assumed that, the tolerator has a higher level (majority) than the recipient of tolerance (minority). To promote tolerance requires contextual modification, Indonesian use religious moderation as a basis for more acceptable social interactions between citizens and netizens (Kawagung, 2019). Agus Akhmadi said that in multicultural life, understanding and awareness are needed to respect differences, diversity and a willingness to interact with anyone fairly. Therefore, an attitude of religious moderation is needed in the form of recognition of the existence of other parties, for the sake of harmony and peace (Zuo'an, 2013; Akhmadi, 2019). The study by Erwin Mahrus et al., Found that the Islamic Manuscript in Sambas West Kalimantan and the manuscript of Maharaja Imam Sambas contain messages of religious moderation education which consist of the principles of flexibility and renewal (tajdîd), the principle of ease (taysîr), and the principle of tolerance (tasâmuh). The madrasah founded by Maharaja Imam Sambas is one of the oldest Islamic educational institutions promoting religious moderation in West Kalimantan (Mahrus et al., 2020).

The novelty of this paper is different from previous studies of religious moderation, because this paper, we will identify the typology of religion and state relations in Indonesia, and the characteristics of legal politics applied by the government regarding religious moderation in Indonesia.. The discussion of legal politics is important because this field is the basic foundation that encourages the birth of regulations and policy of law from the state (Loughlin, 2000). Tengku Moh Radhie said that policy of law is the will of the authorities regarding the laws in their territory and the direction of development of the law (Sajarah & Mahmudah, 2017).

RESULT AND DISCUSSION

Typology of Religion and State Relations in Indonesia: Symbiotic Mutualism

In the Indonesian context, the relationship between religion and the state also influenced the discussions of the Indonesian state, namely Pancasila. Pancasila was chosen to be the State Foundation (Andrew et al., 2019) by the Preparatory Committee for Indonesian Independence (PPKI) on August 18, 1945. Notonagoro said that Pancasila was a statutory norm. As the highest norm, it has a higher position than the 1945 Constitution and other legal regulations. As its position as the basis and ideology of the state, Pancasila must be used as a paradigm in legal development, including all efforts to reform (Hamzani & Mukhidin, 2018). As the basis of the state, ideology and national philosophy, Pancasila also determines the typology of religion and state relations in Indonesia. This typology cannot be separated from the historical context of the

arrangement. Pancasila is the result of a noble agreement from the founding fathers (Latif, 2018). Pancasila is a masterpiece from the best young people of Pancasila as the ideal value of Indonesian law; its birth was not through an instant process, but through a series of deep contemplation and reflection processes carried out by the nation's founders. Notonogoro said that Pancasila is the result of consensus among the founders of a nation that has 3 (three) balance characteristics, namely: first, the democratic theist state, which brings together the idea of the Islamic group on the one hand (an Islamic state) and the idea of a nationalist group on the other (a secular state) which contradicts one another but to be synthesized into a democratic theist country. Second, schools of monodualism, namely Pancasila, are a point of balance that can bring together two conflicting streams, the flow of individualism (individual nature) and collectivism (social characteristics), which are synthesized into monodualism. Third, dialectical understanding, namely Pancasila as a synthesis of several fundamentals of modern statehood included in the category of world ideas (voting) and the old tradition of Indonesian life regarding musawarah mufakat (original ideas) to uphold the modern state of Indonesia (Sajarah & Mahmudah, 2018). The ability to synergize these various interests shows that Pancasila has a flexible adaptability. This statement was confirmed by Siri with the term Pancasila as a way of life in the context of liquid modernity (Siri, 2010). Consequently, Pancasila recognizes the freedom of religion for its people. Pancasila also accommodates differences and rejects the spirit of anti-tolerance (Dewantara, 2015). Gradually, the challenges of Pancasila as the ideology and basis of the state in the reform era are increasingly diverse, especially for the younger generation (Muslimin, 2016), so that the strengthening of the noble values of Pancasila must be carried out in a sustainable manner.

As a state philosophy, the principles of Pancasila contain a universal philosophy of life for a nation and state, worldly and spiritual aspects, mental, spiritual, as well as morals of the Indonesian people. Therefore, Pancasila as a way of life and fundamental nation spirit will not be expired as long as the nation and all citizens understand it. Indonesia is a multicultural country. So that problems such as disintegration, social stratification cultural tensions and competition, the struggle hegemony are naturally sublimating. The Indonesia's diversity has a great potential to cause social conflicts related to ethnicity, religion, race, and between groups, even vertically between the government and the people (Junadi, 2011). Therefore, it is needed to manage ethnic diversity to prevent its impact that disrupts the unity of the nation. There are two assumptions that underlie differences of thinking about the relationship between religion and the state in the Indonesian context, Firstly, the problem of political relations between Islam and the state arises and develops from different views among the founders of this republic about what the ideal Indonesia is to be. Secondly, the problem of non- political relationship between Islam and the state does arises from how Islam is articulated socio-culturally, economically and politically in Indonesia. On the one hand, there is a view seeing a formalistic Islam and on the other hand, there is a view of seeing Islam in a substantial way. The view of formal Islam tends to be exclusive among the man of the state and create tension in the society. Meanwhile, a substantial Islamic view provides a more suitable foundation in forming a harmonious relationship between Islam and the state as well as the society (Jauhari, 2018).

There are three mainstream paradigms regarding the relationship between state and religion: the integralistic paradigm, the symbiotic paradigm, the secularistic paradigm (Zulkifli, 2014). Based on the above theory, the typology of religion and state relations in Indonesia based on Pancasila is symbiotic mutualism (Wahdini, 2020). This theory defines that state and religion

relations are mutually beneficial for the participants it means that state and religion need each other, complement and support each other proportionally. The symbiotic paradigm of mutualism illustrates that religion needs a state because with the state, religion can develop. On the other hand, the state also needs religion, because with religion it can realize and develop with ethical and moral-spiritual guidance the objectives of Indonesia as stated in Alene 4 of the Preamble of the 1945 Constitution. With such a typology, religious value has the opportunity to guide the laws. State law, in certain issues, is possible to regulate out religious law as state law, for example is Law Number 1 Year 1974 on Marriage. Shaleh states that the relationship between religion and state cannot be separated from legal politics in this country, to achieve the so-called ideals of the nation and the goals of the State (Shaleh, 2019). The state is based on the one and only Godhead Article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the placement of "*God Almighty*" as the first precept in Pancasila has several meanings. One of which Pancasila is born in a spiritual atmosphere to fight colonialism and imperialism, so that unity and brotherhood are needed among the components of the nation. The first precept in the Pancasila "*Belief in One God*" is an important factor in strengthening unity and brotherhood, because the history of the Indonesian nation is motivated by the values of "*God in One God*." The willingness of Islamic figures to remove the sentence "*with the obligation to carry out Islamic law for its adherents*" after "*God Almighty*" at the time of the ratification of the UUD, August 18, 1945, cannot be separated from the ideal that Pancasila must be able to maintain unity and brotherhood between all components of the nation. This means that the Muslim founding fathers of the Indonesian nation have made unity and brotherhood among the components of the nation, the main goals that must be more important than other primordial interests. Pancasila has remained victorious to this day because the formulation of the first precepts (Djaelani, 1996) is considered capable of providing a sense of justice, benefit and certainty regarding the proportional relation between religion and state.

Characteristics of the Legal Politics of Religious Moderation in Indonesia: Responsive

John Sydenham Furnivall said that Indonesia is included in the category of plural society. Furnivall highlighted that the characteristic of a plural society is a society in which the value system adopted by various social units which makes them less loyal to society as a whole, lacks cultural homogeneity or even lacks the basis for understanding each other (Furnivall, 2004). Plural society is easily divided due to the lack of common will, as in several cases in Indonesia. Religious moderation is a national strategy as a common will in an effort to prevent or reduce religious conflicts. There are at least 3 (three) reasons that religious moderation is important to implement. First, one of the essentials of the presence of religion is to maintain human dignity as a noble creature created by God whose human rights are recognized. Second, along with the development and spread of mankind, religion also develops and spreads, so that religious texts change in their interpretation according to their socio-political interests and; third, in Indonesia as a heterogeneous country, religious moderation is needed as a cultural strategy in caring for Indonesians. It is agreed that Indonesia is not a religious state, but also does not separate religion from the state and the daily life of its citizens (Akhmadi, 2019). For this reason, every citizen is encouraged to think and behave moderately in following religion through various legal regulations that accommodate religious moderation enacted used by the state as a tool for social engineering. Pound states that, law is not only used to perpetuate power, but law can function as

a tool of social engineering (Hepple, 2012). In order to carry out law as a tool for social engineering of religious moderation in Indonesia, the state first determines its legal political character. The application of legal politics adopted greatly influences how the style of law and the character of its enforcement. Mahfud said that policy of law determines the law to be enforced or to be repealed or not enforced, all of which are intended to achieve the goals of the state as stated in the Preamble to the 1945 Constitution (Riansyah, 2018).

Talking about the characteristics of legal politics, according to Ahmadi there are three categories, namely responsive, repressive and autonomous law. Responsive law, according to Ahmadi, is contrasted with two other legal models, repressive law and autonomous law. By repressive law, law is intended as a means of repressive power. This type of law aims to maintain the status quo of the rulers, which is often enforced on the pretext of maintaining order. Autonomous law is a legal institution that is loyal to maintaining the independence of the law itself. Because of its independent nature, what is put forward is a strict separation between power and law (Ahmadi, 2016). Meanwhile, responsive law considers the law a social institution. The character of moderation in Indonesian cannot be separated from the legal politics established by the state, considering that the relationship between state and religion in Indonesia is quite unique. Indonesia which is based on Pancasila is neither a religious state nor a secular state. The government during the New Order era also acknowledged that religion has an important role to play in regulating the country, by saying that religion has a strategic role to provide a moral, ethical and spiritual foundation for national development as the practice of Pancasila. Here religion has an important role, but not in the sense that religious law is made into positive law. What is emphasized is that religious values (regardless of religion) can be used as a basis for implementing development. Thus, development is not diverted in an inhuman direction (Yewangoe, 2006). Legal politics related to religious life are stated in Article 28 E Paragraph (1) and Paragraph (2) and Article 29 of the 1945 Constitution which states that everyone is free to embrace a religion and worship according to their religion; and paragraph (2) states that everyone has the right to freedom of belief, to express thoughts and attitudes according to their conscience. Article 29 Paragraph (2) states that the state guarantees the freedom of each resident to embrace his or her own religion and to worship according to that religion and belief. In order to carry out the mandate of the 1945 Constitution to provide legal protection for the people to exercise their freedom of diversity, the government has also issued a number of policies and regulations that are closely related to freedom of religious life in Indonesia, including:

1. Decree of the President of the Republic of Indonesia Number 1/Pnps of 1965 concerning the Prevention of the Abuse and/or Defamation of Religion;
2. Law Number 5 Year 1969 concerning Blasphemy of Religion;
3. Joint Decree of the Minister of Religion and the Minister of Home Affairs Number: 01/Ber/Mdn-Mag/1969 concerning the Implementation of Government Apparatus Duties in Ensuring Order and Smoothness in the Implementation of Development and Religious Worship by Adherents;
4. Joint Decree of the Minister of Religion and the Minister of Home Affairs Number 1 of 1979 concerning the Procedure for Implementing Religious Broadcasting and Foreign Assistance to Religious Institutions;
5. Decree of the Minister of Religion Number 35 of 1980 concerning the Forum for Religious Deliberation;
6. Instruction of the Minister of Religion Number 4 of 1978 concerning Policies Regarding Beliefs;
7. Joint Regulation of the Minister of Religion and Minister of Home Affairs Number: 9 of 2006 Number: 8 of 2006 concerning Guidelines for Implementing the Duties of Regional Heads / Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and Establishing Houses of Worship.

From the exposure of regulations on religious life in Indonesia, it can be seen that there is an intention that the state law policy explicitly recognizes and protects the life of religious freedom in Indonesia, but it is very unfortunate that until now it has not been written in the form of a concrete statutory regulations. The "non-existence" of regulation on religious moderation produced by the Legislative (DPR) and the President is suspected to be the reason that cases of religious-based radicalism still frequently appear. The Indonesian Government through the Indonesian Ministry of Religion has created an idea and a movement known as religious moderation. The policy was launched on October 8, 2019 by the Minister of Religion Lukman Hakim Syaifudin by releasing a book of religious moderation which theoretically has four commitments, namely national commitment, anti-violence, accommodative to local culture and tolerance. In a pocket book entitled "*Questions and Answers on Religious Moderation*" published by the Indonesian Ministry of Religion, an example of the courage to understand moderate attitudes is exposed. Courage is considered good because it falls between recklessness and fear. Generosity is also good because it is between extravagant and stingy. Religious moderation is the process of understanding as well as practicing religious teachings in a fair and balanced manner, in order to avoid extreme or excessive behavior when implementing them. People who practice religious moderation are called moderates. The emergence of policies from the government initiated by the Indonesian Ministry of Religion to spread the values of religious moderation can be considered as one of the positive efforts to tackle religious-based radicalism which deserves mutual appreciation and support. This policy also shows that the legal politics of the Indonesian state are related to the issue of religious moderation. The policy on religious moderation driven by the Ministry of Religion of the Republic of Indonesia, in the perspective of the political theory of religious moderation can be said to have responsive characteristics. By looking at the character of legal products in Indonesia, it can be concluded that the character of legal products of religious moderation is responsive. A responsive law-making process reflects a sense of justice in society and accommodates public participation and aspirations (Haliim, 2016). The responsive legal politics of religious moderation in Indonesia is based on the information below: its construction is participatory for the community; It contains aspirations for the demands of society; its scope is limitative (close interpretative).

CONCLUSION

Indonesia, which is based on Pancasila, has placed the relationship between religion and state in a symbiotic relationship, which illustrates that the relationship between the two does not need to be contradicted. Religious values are recognized by the state as having a strategic and important role in the formation of national law to realize the state's goals based on the 4th Aleneas of the Preamble of the 1945 Constitution. As for the legal politics of religious moderation in Indonesia, it is responsive.

REFERENCES

- Ahmadi. (2016). Controversy over the application of law: A review of repressive law synthesis. *Autonomous Law, and Responsive Law*, 9(1), 1–18.
- Akhmadi, A. (2019). Religious moderation in Indonesia diversity. *Journal of Religious Education and Training*, 13(2), 45–55.
- Al-Amin, A.R. (2012). *Dismantling the khilafah project ala hizbut tahrir Indonesia*.

- Andrew, J., Henry, S., Yudhistira, A.N., Arifin, Y., & Permai, S.D. (2019). Analyzing the factors that influence learning experience through game based learning using visual novel game for learning pancasila. *Procedia Computer Science*, 157(1), 353–359.
- Arifianto. (2019). Islamic campus preaching organizations in Indonesia: Promoters of moderation or radicalism? *Asian Security*, 15(3), 323–342.
- Azwar, W. (2018). The resistance of local wisdom towards radicalism: The study of the tarekat community of West Sumatra, Indonesia. *Journal of Social Sciences & Humanities*, 26(1), 1-9.
- Burhani, A.N. (2017). The banning of the consolidation of democracy in Indonesia. *ISEAS Perspective*, 71(2), 1–10.
- Damayanti, N.P., Thayibi, I., Gardhiani, L.A., & Limy, I. (2003). Religious radicalism as a form of deviant behavior: A case study of the Islamic defenders front. *Indonesian Journal of Criminology*, 3(1), 45-58.
- Deckard, D.N., & Jacobson, D. (2015). The prosperous hardliner: Affluence, fundamentalism, and radicalization in Western European Muslim communities. *Social Compass*, 62(3), 412–433.
- Dewantara, A.W. (2015). Pancasila as the foundation for religious education in Indonesia. *Civilians*, 5(1), 1-9.
- Djaelani, A.T. (1996). The politics of Islamic law. In A. Ahmad, (Eds.), *Dimensions of Islamic Law in the National Legal System*. Jakarta: Gema Insani Press.
- Duile, T. (2017). Islam, politics, and cyber tribalism in Indonesia: A case study on the front Islam. *Iqas*, 48(1), 249–272.
- Facal, G. (2020). Islamic defenders front militia and its impact on growing religious intolerance in Indonesia. *TRaNS: Trans-Regional and-National Studies of Southeast Asia*, 8(1), 7–20.
- Furnivall, J. (2004). *The classics in Indonesian studies*. Netherlands India.
- Galamas, F. (2015). Terrorism in Indonesia : An overview. *Research Document of the Spanish Institute for Strategic Studies*, 2(1), 1–16.
- García, M.S., & Talavero, C.V. (2019). A sociological approach to the extremist radicalization in Islam: The need for indicators. *International Journal of Intelligence, Security, and Public Affairs*, 21(1), 66–83.
- Haliim, W. (2016). Indonesian deliberative democracy: The concept of community participation in forming responsive democracy and law. *Public Indonesia*, 42(1), 19-30.
- Hamzani, A.I., & Mukhidin, M. (2018). National law development as implementation of pancasila law ideals and social change demands. *Jurnal Dinamika Hukum*, 18(2), 131-147.
- Hepple, B. (2012). Negotiating social change in the shadow of the law. *South African Law Journal*, 129(2), 1-9.
- Huda, M.N. (2017). *Youth, middle-class Muslims, and the challenges of intolerance and radicalism in urban areas*.
- Ibda, H. (2019). The strategy of the educational institution of central java in preventing radicalism. *Borneo International Journal of Islamic Studies*, 1(2), 107–128.
- Jauhari, M.I. (2018). Multicultural problems and pancasila construction. In *Pancasila Transnationalism and State Sovereignty*. Yogyakarta: Lkis.
- Junadi, Y. (2011). *The relationship between religion and state: Redefining the discourse of constitutionalism in Indonesia*. Institute For Migrant Rights Press.
- Kawangung, Y. (2019). Religious moderation discourse in plurality of social harmony in Indonesia. *International Journal of Social Sciences and Humanities*, 3(1), 160–170.
- Latif, Y. (2018). The religiosity, nationality, and sociality of pancasila: Toward Pancasila through Soekarno's way. *Studia Islamika*, 25(2), 207–245.
- Loughlin, M. (2000). *Sword and scales an examination of the relationship between law and politics*.
- Mahrus, E., Prasojo, Z.H., & Busro, B. (2020). Messages of religious moderation education in sambas Islamic manuscripts. *Madania: Journal of Islamic Studies*, 24(1), 39-48.
- Mansur, F.M., & Husni, H. (2020). Promoting religious moderation through literary-based learning: A quasi-experimental study. *International Journal of Advanced Science and Technology*, 29(6), 5849–55.
- Muslimin, H. (2016). Challenges to pancasila as the post-reformation ideology and state foundation. *Journal of Cakrawala Hukum*, 7(1), 30–38.
- Petrû, T. (2015). The front defenders of Islam: Well-connected Indonesian radicals. *A threat or a spent force*. Retrieved from <http://www.academia.edu/download/49175863/02-petru.pdf>
- Riansyah, A.I. (2018). *The relationship between politics and law*. Doctoral Dissertation, UIN Raden Intan Lampung.

- Sajaroh, W.S., & Mahmudah, S.H. (2018). *NU women's role in narrating moderate Islam with majelis Taklim*.
- Shaleh, A.I. (2019). Relationship between Religion and State according to Pancasila and the 1945 Constitution of the Republic of Indonesia. *Journal of Indonesian Legal Development*, 1(2), 241-256.
- Siri, T.A. (2010). Pancasila as way of life in the context of liquid modernity. *Sociological and Ethical Analysis*, 2(1), 52-61.
- Valfort, M.A. (2020). Anti-Muslim discrimination in France: Evidence from a field experiment. *World Development*, 135(1), 105022-105045.
- Wahdini, M. (2020). The symbiotic paradigm of religion and the state. *Journal of Islamic and Law Studies*, 4(1), 17-32.
- Wibowo, A. (2019). Religious moderation campaign on Facebook: Message forms and strategies. *Edugama: Journal of Religious Education and Social Affairs*, 5(2), 85-103.
- Yewangoe, A.A. (2006). Freedom of religion in Indonesia. In C. Setiawan, & A. Mulyana, (Eds.), *Freedom of Religion or Belief in Indonesia*. Komnas HAM, Jakarta.
- Zulkifli. (2014). Paradigm of religion and state relations. *Sharia Scientific Journal*, 3(2), 1-9.
- Zuo'an, W. (2013). Religious harmony: A fresh concept in the age of globalization. *Procedia-Social and Behavioral Sciences*, 77(1), 210-213.