

Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law

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ABSTRACT

The number of controversies and debates about integrating Islamic law into the national legal system in Indonesia has led to many counter-productive perceptions, so progressive thinking is needed all parties can accept that. Therefore, this study examines the thoughts of Agus Moh Najib, a Muslim scholar, on integrating Islamic law into the national legal system to create a fair legal system by the demands of society and the state. Methodologically, this research uses a philosophical approach with library research and is also descriptive-analytical qualitative research. The results of this study state that Islamic Law and Indonesian law have several interrelationships and interconnections perspectives on Agus Moh Najib's. He provides recommendations that to maximise the interconnectivity of Islamic law to national law, the first step that needs to be taken is to redesign, reformulate and renovate the ushul fiqh building, which is the basis for the formation of Islamic law without having to tear it down by reviewing existing concepts and theories so that the role of ushul fiqh can be more optimal in developing Islamic legal science that contributes to the formation of laws and regulations in Indonesia. Then harmonisation is carried out between Islamic law and various legal sciences developed in Indonesia regarding subject matter and language. In other words, it is necessary to strive for the formation of the Islamic law that is in harmony with legal science in general based on the ideal moral norms of the core teachings of Islam and also considers the culture and empirical realities that exist in plural Indonesian society.

Keywords: Agus Moh Najib's thoughts; Interconnection; Islamic Law; National Law.

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INTRODUCTION

The interconnection between Islamic Law and National Law in Indonesia is complex and develops along with Indonesia's long and multi-ethnic history. Indonesia, as a country with a majority Muslim population, has a dual legal system, namely a legal system consisting of national law and Islamic law (Fasseur, 2007; A. A. Salim et al., 2022). These two legal systems have a close relationship and influence each other in several ways.

Islamic law in Indonesia is applied in areas that implement Islamic law, such as Aceh (Bustamam-Ahmad, 2007). In this area, Islamic Law becomes the generally applicable law and the legal basis for regulating everyday actions. National Law in Indonesia consists of laws, government regulations, and regional regulations that apply throughout Indonesia. However, in practice, these two legal systems often overlap. Sometimes, national law in Indonesia uses the Islamic law principle of decision-making. For example, judges in judicial decision-making may use Islamic law principles to decide particular cases.

National law and Islamic law are different legal systems, but they can co-exist in some ways. National law refers to the legal rules made by the state and generally applies throughout the country's territory. In contrast, Islamic law refers to the legal rules derived from the sources of Islamic law, such as the Qur'an, Hadith, and Ijtihād of scholars. In some instances, national law may include aspects of Islamic law, such as marriage, inheritance, and Islamic finance (Islam, 2018; A. Salim, 2015). However, in some other respects, national laws may conflict with the principles of Islamic law principle; therefore, in Muslim-majority countries, such as Indonesia, there are efforts to integrate principles of Islamic law into the national legal system.

The integration of Islamic law into the national legal system can cause controversy and debate, as there are different views on how to integrate the principles of Islamic law into the national legal system. For example, there is debate about whether Islamic law should be applied universally or only to Muslim communities. In this case, it is essential to seek agreement and consensus acceptable to all parties to create a fair legal system that is fair and by the demands of society and the state.

Some works of literature that can be used as references in the study of the interconnection of Islamic law and Indonesian law are: "Islam and the Secular State in Indonesia" by Luthfi Assyaukanie (2009), "Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy" by Jan Michiel Otto (2008), "Islam and Democracy in Indonesia: Tolerance without Liberalism" by Jeremy Menchik (2016), and "Islamic Law and Society in Indonesia" by Tim Lindsey (2008). In addition, some previous research results can be used as a comparison and additional reference material in this study, such as research conducted by Luqman Nul Hakim (2023), Suud Sarim Karimullah

(2022b), Muslihun (2018), Ahmad Imam Mawardi (2018), Ahmad Yasa (2015), Lina Kushidayati (2014), and several other relevant research results.

The interconnection between Islamic law and Indonesian law has become an essential subject of criminal research in Indonesia. The consequences of past research on this subject matter consist of the record, position, influence, and various current issues related to Islamic law and national law in Indonesia. Research on the record of interconnections between Islamic and Indonesian law shows how Islamic law has driven the development of Indonesian law. In this regard, many authors discuss the pre-colonial period and then the Dutch colonial period. Some authors discuss the period after Indonesian independence, including modifications in the national penal code.

In examining the role of Islamic law within the Indonesian legal system, there has been an evaluation of diverse legal regulations about Islamic law in Indonesia. Previous scholars have deliberated on legal provisions concerning marriage, divorce, inheritance, and other aspects of family law. They have also explored endeavours to incorporate Islamic law principles into the national legal framework. Moreover, in scrutinizing the impact of Islamic law on legal practice in Indonesia, there has been an analysis of how Islamic law is implemented within the Indonesian legal system. Prior researchers have examined the interplay between national and Islamic law in specific legal cases, such as civil and criminal matters. Additionally, in the context of contemporary issues concerning Islamic law and Indonesian legislation, including debates surrounding the implementation of Sharia law in several provinces in Indonesia, initiatives to reform the family law system, and the influence of globalization on the application of Islamic law in Indonesia.

Therefore, what needs to be done is not only to bring the term Islamic law closer to the term general law applicable in Indonesia but also to redesign and reformulate related concepts and theories in ushul fiqh. This will help the role of ushul fiqh to be more optimal in the development of contemporary Islamic legal science by the ideas proposed by Agus Moh Najib. The idea of the redesign of ushul fiqh science proposed by Agus Moh Najib is the basis for the development of concepts, theories, and methodologies of Islamic law, which are expected to make a greater contribution, both in solving legal problems in society and the ongoing development of Indonesian national law.

Agus Moh Najib is one of the professors in the field of ushul fiqh at Sunan Kalijaga State Islamic University Yogyakarta and Director of Analysis and Alignment of the Deputy for Law, Advocacy and Regulatory Supervision within the Pancasila Ideology Development Agency (BPIP-RI), so his ideas are very influential on the formation of national laws on Islamic law by the Indonesian context. Moreover, national law in Indonesia with an archipelago perspective will need the contribution of Islamic law because Islamic law in its formulation is not only based on the ideal moral norms of sharia but also considers the culture and empirical reality that exists in Indonesian society so that there is a process of interconnection between Islamic law and national law.

METHODS

As a research that will explore the interconnection of Islamic law with national law by using the ideas of Agus Moh Najib, the building and scientific framework of Islamic law and general law applicable in Indonesia will be comprehensively studied. Methodologically, this research uses a philosophical approach with the type of library research. The data sources are various written works compiled by Agus Moh Najib in the form of books, journals and other documents that are still relevant to this research. This research is also a descriptive-analytical qualitative research, which tries first to describe the framework and scientific language of the two laws in Agus Moh Najib's perspective taken from various works that have been collected. The content of the data obtained is analysed and interpreted to conclude.

RESULTS AND DISCUSSION

Redesigning Ushul Fiqh as a Building of Islamic Law

Redesigning ushul fiqh can be interpreted as an attempt to renew or update the method of interpreting Islamic law based on the basic principles of ushul fiqh. Ushul fiqh in various contemporary schools is generally based on principles that have existed since classical times, but some variations and interpretations may occur. Here are some of the commonly used instruments of ushul fiqh in some contemporary schools: first, the Hanafi school of jurisprudence: *Al-Qiyas* (legal analogy), *Al-'Urf* (prevailing custom in society), *Istihsān* (preference for justice or wisdom), *Al-Masalih al-Mursalah* (public interest), *Istishāb* (principle of maintaining the status quo), and *'Illāh* (causation) (Al-Marghināni & Al-Hanafi, 1998; al-Samarqandi, 1995). Second, the Maliki school of jurisprudence: *Al-Qiyas*, *Al-'Urf*, *Istihsān*, *Al-Masalih al-Mursalah*, *Istishāb*, and *'Illāh* (Anas, 1986; ibn Sa'id al-Tanukhi, 1970). Third, the Shafi'i school of jurisprudence: *Al-Qiyas*, *Al-'Urf*, *Istihsān*, *Al-Masalih al-Mursalah*, *Istishāb*, *Al-'Adāh* (custom or established practice in society), and *'Illāh* (Abū Abdullah Muḥammad bin Idris asy-Syafi'ī al-Muṭṭalibi al-Qurasyī, 1993; Al-Syafi'i, 1940; Karimullah, 2022a). Fourth, the Hanbali Mazhab: *Al-Qiyas*, *Al-'Urf*, *Istihsān*, *Al-Masalih al-Mursalah*, *Istishāb*, *Al-'Adah*, and *'Illāh* (Ghazali, 1937; Ibn Qudamah, 1968). Fifth, Ja'fari school of jurisprudence (Shia): The Qur'an, Hadith from the *Ahlul Bayt* (descendants of the Prophet Muhammad), *Ijmā'*, *'Aql* (reason), *Al-'Urf*, *Al-Masalih al-Mursalah*, *Istishāb*, and *'Illāh* (Al-Zahiri, 1960; Kulayni, 1986).

It is important to recognise that practices and approaches in contemporary schools may vary based on individual understanding and differences in social and cultural environments. In addition, contemporary scholars may develop new instruments and methods that suit the challenges of modern times but remain grounded in the fundamental principles of ushul fiqh. Therefore, the main objective of redesigning ushul fiqh is to understand better the needs of the times in the face of social and cultural changes. Redesigning ushul fiqh can be done through several steps, including: Analysing the sources of Islamic law, namely the Quran, hadith,

ijma' (agreement of scholars), and qiyas (analogy or comparison). In the face of social and cultural changes, the approaches taken by Islamic scholars and scholars may differ. However, the underlying principles of ushul fiqh and prudence in interpreting the sources of law remain the cornerstones in achieving a better understanding of the needs of the times.

Interpreting the sources of Islamic law in a more contextualised way and relevant to the needs of the times. Building a more inclusive and holistic theoretical and methodological framework, considering the social, cultural and political context in which Islamic law is applied. Strengthening public participation in interpreting and implementing Islamic law by establishing more democratic and transparent mechanisms. In reconstructing the ushul fiqh, it is important to pay attention to consistency with the basic principles of Islam and the rules of the ushul fiqh that scholars have established (Najib, 2002). In addition, the reconstruction of ushul fiqh must be carried out with full consideration and in-depth study and involve various parties with expertise and experience in Islamic law. Involving various parties with expertise and experience in Islamic law can produce a more comprehensive and diverse perspective in the face of social and cultural changes. It also enables cross-disciplinary collaboration and enriches the understanding of Islamic law that is relevant and adaptive to the needs of the times.

The significance of studying ushul fiqh in comprehending and advancing Islamic law in Indonesia is undeniable. Ushul fiqh, as a field of knowledge, holds great relevance in the exploration of Islamic law, as it encompasses the fundamental principles, methodologies, and tools employed in understanding, interpreting, and evolving Islamic jurisprudence. The primary aim of ushul fiqh is to provide a systematic framework for the development of Islamic law, entailing the analysis of sources such as the Qur'an, hadith, *ijmā'* (consensus), *qiyas* (analogical reasoning), and other principles guiding the interpretation and progression of Islamic law.

Within the Indonesian context, the study of ushul fiqh plays a pivotal role in addressing diverse legal issues prevalent in society. Given Indonesia's heterogeneous and diverse populace, delving into ushul fiqh aids legal experts in navigating intricate legal challenges and finding appropriate resolutions. Ushul fiqh serves as a guiding framework and methodology for comprehending, interpreting, and advancing Islamic law in line with Indonesia's specific needs and local context. Additionally, the study of ushul fiqh forms the bedrock for fostering an improved discipline of Islamic law in Indonesia. By mastering the foundational principles of ushul fiqh, legal experts can more effectively develop and refine Islamic law to meet the demands of contemporary times.

Studying ushul fiqh can also help the Indonesian people understand Islamic law better. In Indonesia, which has a Muslim majority, a good understanding of Islamic law will be very important in maintaining the integrity of society and the state. Therefore, the study of ushul fiqh is very important to be developed and integrated into the legal system in Indonesia through alignment with the applicable laws in Indonesia. The principles and methods of ushul fiqh are used to ensure that

the applicable Islamic law remains by the national legal foundation that contextually applies in this country. Ushul fiqh enables the contextualisation of Islamic law in Indonesian society, which has distinctive social, cultural and political characteristics. The principles of ushul fiqh are used to understand and apply Islamic law by considering local values and the needs of Indonesian society. Using the ushul fiqh approach, Islamic law in Indonesia can develop by considering local needs and contexts, achieving inter-mazhab harmonisation, and ensuring benefit and justice in developing Islamic law.

Redesigning ushul fiqh to broaden the scope of ushul fiqh research by adopting an interdisciplinary approach can help integrate the perspectives of social sciences, humanities, and other sciences in the understanding and development of Islamic law. This can involve collaboration with experts in social sciences, sociology, anthropology, psychology, and other disciplines to develop a more comprehensive view. The redesign of ushul fiqh is directed to bring closer and interconnect between Islamic law and legal science in general and position Islamic law proportionally between its sacred and profane dimensions. To do this redesign, Agus Moh Najib (2021) offers four things: first, defining and positioning Islamic law among the terms in the classical fiqh scientific tradition, namely sharia, sharia law and fiqh itself.

In contrast to these three terms, Islamic law represents the legal aspect of fiqh, arising from the deliberation between Quranic verses and hadiths, which discuss Sharia laws and values, and *'urf* (customary practices) and empirical reality. With this perspective, Islamic law embraces a comprehensive understanding of the law, facilitating dialogue, interconnectedness, and mutual contributions. The Compilation of Islamic Law (KHI) in Indonesia exemplifies integrating Islamic law principles into the national legal system, resulting from the interplay between Islamic law and national law. First published in 1991, the KHI has undergone multiple revisions to date. It encompasses various domains of Islamic law, encompassing marriage, divorce, inheritance, waqf, zakat, hajj, and other areas. The primary aim of the KHI is to ensure legal certainty for Muslims in Indonesia while maintaining harmony with Islamic values and national legal principles.

Drafting the KHI involved the active participation of various stakeholders, including religious scholars, experts in Islamic law, academics, legal practitioners, and government authorities. The KHI drafting team conducted extensive research and studies on the sources of Islamic law, such as the Quran, hadith, and scholarly interpretations (ijtihad), as well as the practical implementation of Islamic law in Indonesia. During the drafting process, Islamic law principles were carefully examined and integrated with the principles of national law applicable in Indonesia. This integration aimed to establish a harmonious and compatible relationship between Islamic law and national law while ensuring that Islamic law in Indonesia remains by the constitution and the fundamental principles of the national legal system. However, it is important to acknowledge that the KHI continues to face challenges and requires ongoing development and adaptation to respond to social and cultural changes and the evolving needs of society. The government and experts

continue to evaluate and enhance the KHI to maintain its relevance and effectiveness in regulating Islamic legal matters in Indonesia.

The second redesign positions the mujtahid as a lawmaker (*al-hākim*). In the discussion of ushul fiqh, the only lawmaker is God, even the Prophet Muhammad was not placed as *al-hākim*. This causes the theological dimension of Islamic law to be more prominent than its profane dimension. Islamic law carries an enormous theological burden, so it is slow to develop following the changing times. When examined, the Prophet Muhammad and other *mujtahids*, although not explicitly mentioned in the science of ushul fiqh, have a massive role in forming Islamic law. On that basis, in the discussion of *al-hākim*, all the lawmakers should be studied, with an explanation of the differences in their respective positions and positions that position Allah as the actual lawmaker (*al-hākim al-haqīqi*). In Islam, Allah is the absolute ruler with the power and wisdom to determine right and wrong, good and bad. Therefore, the laws that apply in Islam are considered laws established directly by God.

The Prophet Muhammad as an explanatory lawmaker (*al-hākim al-mubayyīn*) who elaborates and details the sharia that God has established, and the mujtahids are relative lawmakers (*al-hākim al-nisbī*) who seek to ground the values of sharia by the context of space, time and civilisation that is constantly changing and developing. As a lawmaker, Prophet Muhammad played an essential role in developing Islamic law and became one of the leading lawmakers in the Islamic tradition. He gave teachings on Islamic teachings and provided examples and actions that became the basis for forming Islamic law. Placing the mujtahid as a lawmaker in the discussion of ushul fiqh will have implications for the view of the proportional position of Islamic law between its sacred and profane dimensions.

The third redesign is to distinguish between sources and methods in the discussion of *maṣādir al-aḥkām* or *adillah al-aḥkām*. At least eleven legal arguments, namely the Qur'an, Sunnah, *Ijmā'*, *Qiyas*, *Istislāh*, *Istishāb*, *Istihsān*, *sadd az-Zari'ah*, *'Urf*, *Qaūl Shahabī* and *Shar'u Man Qablana*, have been discussed as an inseparable unit. This implies indirectly that the sacredness of the Qur'an, As-Sunnah seems to be no different from *Qiyas*, *Sadd az-Zari'ah* and others. When viewed epistemologically, the eleven pieces of evidence can be divided into sources, methods and products of legal thinking.

The source of law is the Qur'an, As-Sunnah, as a textual source that is always dialectical by the mujtahids with the source of empirical reality, namely *'Urf* (*al-wāqī'*) as the third source. *Qiyas*, *Istislāh*, *Istishāb*, *Istihsān*, *sadd az-Zari'ah* are methods of legal interpretation based on the rational meaning of the text, namely *'illāh* and *maṣlahāh*. While *Ijma'* is the agreed legal product, *Qaūl Shahabī* is the product of legal thinking from the companions of the Prophet Muhammad. With this distinction, the results of *ijtihad* of scholars based on specific methods, considering the context of their respective *'urfs*, should not be equated with the Qur'an and Sunnah itself.

The fourth redesign is to formulate fiqh as a legal norm. Formulating fiqh as legal norms are used in several Islamic legal systems in various countries. It formulates legal norms based on fiqh principles found in the sources of Islamic law. These norms are written to be clear, specific, and applicable in the relevant social and legal contexts that correspond to the National legal system. This involves aligning with existing national laws, constitutions, and societal values. In formulating fiqh as a legal norm, it is important to involve fiqh experts, scholars, and Islamic legal authorities who have expertise and authority in this field. In addition, it is necessary to engage in dialogue and consultation with various relevant parties, including community leaders, legal practitioners, and academics, to achieve broader agreement and consensus in developing Islamic law as a legal norm.

Fikih also has a broader meaning than just law because it has a strong moral norm side in addition to its legal norm side. The moral norm side of fiqh comes from the Sharia values that form the basis for the formulation of fiqh. In contrast, the legal norm side generally comes from consideration of the existing *'urf* (customary norms). Therefore, in formulating Islamic legal norms, the results of the internal debate between Nash and maqashid are then dialectic with the existing empirical reality. Thus, Islamic legal norms can be said to be a set of rules due to the debate between Sharia values and norms of community customs, which are formulated consciously and deliberately to realize order in society.

Acknowledging fiqh beyond *'ibadāh mahdāh* as a legal norm becomes highly important when Islamic law contributes to developing legislation and regulations within a nation, particularly in countries where most of the population is Muslim, such as Indonesia. Implementing Islamic law can aid in establishing the Indonesian legal system, serving as the foundation for legal principles and ensuring legal certainty for its citizens. Comprehending Islamic law entails more than just adhering to its regulations; it requires a profound understanding of the underlying moral and ethical values. In practical terms, the Islamic legal system plays a vital role in the everyday lives of Muslims, encompassing diverse aspects such as civil, criminal, and family law. However, it is crucial to note that Islamic law is not solely applicable to Muslims, as it encompasses values that can be embraced by individuals of all backgrounds, irrespective of their religion or belief.

The Contribution of Islamic Law to the Formation of National Law

Being the country with the world's largest Muslim majority, the impact of Islamic law on the progress of national legislation in Indonesia is immense. Throughout history, Islamic law has exerted a significant influence on the evolution of Indonesia's legal system. One of its primary contributions lies in establishing a legal framework founded upon Islamic Sharia principles. Implementing a legal system rooted in Islamic Sharia in Indonesia encompasses applying Islamic law across multiple facets of societal existence.

Agus Moh Najib (2008) revealed that the opportunity for Islamic law to contribute to the formation of national law would be very large if the majority of

Indonesian society could accept the formulation of Islamic law offered. Thus, in the context of Indonesia, the real problem that must be answered immediately is how Islamic law can make a maximum contribution to the development and formation of national law, not how Islamic law can be applied to people who are Muslims only in Indonesia.

During the Dutch colonial period, Islamic law was suppressed and considered irrelevant, but after Indonesian independence, Islamic law was given a more important place in the formation of national law (Butt, 2010; Nurlaelawati, 2010). This was reflected in the formation of the 1945 Constitution, where Islamic law was recognised as one of the sources of national law. In addition, Islamic law also influenced the process of making national laws. Several laws in Indonesia, such as the Marriage Law, Waqf Law, and Halal Product Guarantee Law, adopt Islamic law principles in their drafting. In addition, Islamic law also influences judges' decisions in cases relating to family law and inheritance law.

It is now indirectly that the Islamic penal institutions comprising the Religious Courts and Sharia Courts have also contributed considerably to developing state regulation in Indonesia. The non-secular courts, for example, are authorised to deal with cases relating to kinship law, as are the Sharia Courts, which are authorised to deal with cases relating to sharia criminal regulations (Halim, 2022; Syukur & Bagshaw, 2013). Overall, the contribution of Islamic law to the development of national law in Indonesia is enormous. In Indonesian pluralism, recognising and respecting Islamic law as a source of national law enables the creation of an inclusive and equitable legal system for all Indonesians (Hasyim, 2015; Koschorke, 2019; Sugitanata et al., 2023).

In Indonesia, Islamic law has been acknowledged as a significant legal source that profoundly impacts the overall national legal framework. This recognition is evident through the enactment of Law Number 1 of 1974 regarding Marriage and Law Number 7 of 1989 regarding Human Rights. This recognition grants Muslims in Indonesia the opportunity to structure their lives by the teachings and principles of Islamic law. However, it is important to highlight that recognising Islamic law in Indonesia operates within the broader context of the national legal system and does not contradict the fundamental principles of the state or universally accepted laws. Moreover, the prevailing social and political circumstances influence the adherence to Islamic law in Indonesia. While certain regions, such as Aceh, strictly implement Sharia law, in other areas, the application of Islamic law is limited to specific domains such as marriage, inheritance, and religious practices.

Applying Islamic law is sometimes a source of debate and controversy in Indonesia, especially concerning human rights and religious freedom. Some issues often debated between those who support the implementation of Islamic law and those who oppose it are related to the death penalty, religious freedom, and LGBT rights (Colbran, 2010; Purwanto, 2020; Wijaya, 2020). Overall, respect for Islamic law in Indonesia is still evolving and is influenced by the existing social, political and cultural context. Nonetheless, Indonesia continues to recognise Islamic law as

an essential source of law in its national legal system. In Indonesia, Islamic law is recognised as one of the sources of national law equal to customary law, positive law, and international law. This recognition is contained in Article 29, paragraph (2) of the 1945 Constitution, which states that the state respects and maintains the diversity of ethnicities, religions, races and groups and guarantees the right of every citizen to practice religion and worship by their respective beliefs.

As a source of national law, Islamic law influences various areas of regulation in Indonesia, including marriage, inheritance, zakat, and justice. In the field of marriage, Islamic law is recognised as one of the religions that can be used as a basis for marriage and divorce. In inheritance, Islamic regulations are also recognised as a source of law that can be used to determine the rights and responsibilities of heirs. In the field of zakat, Islamic regulations have become the basis of criminal law that regulates the collection, supervision, and distribution of zakat. Meanwhile, Islamic rules in criminal law also influence various criminal provisions stipulated in the Criminal Code (KUHP), including punishment for robbery, fraud, and adultery perpetrators. However, in its software, Islamic rules as a source of regulations across the country still depend on the interpretations and perspectives of judges and criminal experts.

Several controversies arise in the application of Islamic law, especially about aspects related to human rights. Therefore, in applying Islamic law, it must pay attention to the principles of human rights and the values of justice to prevent injustice or abuse of the law. Applying Islamic law that considers the principles of human rights and values of justice is critical to ensure no violations of human rights and justice in applying the law. Some principles that must be considered in applying Islamic law that respects human rights and values of justice include: 1) Equality: Everyone should be treated equally before the law without discrimination or unfair treatment based on race, religion, gender, or any other background. 2) Fairness: Legal decisions must be fair, non-discriminatory, and based on sound evidence and transparent processes. Justice should also be applied to all parties involved, both perpetrators and victims. 3) Tolerance: The application of Islamic law must consider freedom of religion and individual beliefs and maintain harmony and tolerance between religious communities. 4) Protection of human rights: Islamic law must consider human rights, including freedom of opinion, assembly and organisation, and not be subjected to discrimination, inhumane treatment and violence. 5) Compliance with international law: The application of Islamic law must align with internationally agreed human rights standards recognised by Indonesia.

In applying Islamic law, parties involved, such as judges, lawyers, and jurists, must understand and internalise these principles to ensure that decisions consider human rights and the values of justice. In addition, society also needs to continue supporting efforts to apply Islamic law in a way that respects human rights and values of justice to create a just and harmonious society.

The functioning of Islamic prison justice in Indonesia, as in many other prison systems, can be good or bad, depending on the independence of the judiciary, the ability of lawyers and prosecutors, and the information and integrity of judges and decision-makers. In Indonesia, Islamic law has been implemented in various laws and guidelines, including law number one of 1974 on Marriage, regulations 23 and 12 of 2002 on protecting toddlers, and the Criminal Code. However, along with social and cultural changes, there are challenges in using Islamic regulations to recognise the concepts of justice and human rights.

Some of the controversies in the application of Islamic law in Indonesia are the application of excessive, discriminatory, or unfair punishments and the resolution of cases that do not consider the rights of the sufferer or defendant. In addition, there are also issues relating to discriminatory treatment of women and minority groups, human rights violations, as well as the settlement of cases based on customary law or community traditions that do not take into account the rights of victims. Therefore, in utilising Islamic regulations in Indonesia, it is imperative to consider the ideas of justice and human rights and ensure that the rights of victims and defendants are fulfilled. The position of judges and decision-makers in knowing and internalising these standards is crucial to ensure that choices are fair and non-discriminatory. Similarly, groups want to be supported to raise awareness about their rights and how to fight for them through judicial techniques, along with guidance from advocacy groups and lawyers.

According to Agus Moh Najib (2008), to maximise the contribution of Islamic law to national law, the first step that needs to be taken is the alignment between Islamic law and legal science that has developed in Indonesia, both in terms of subject matter and language. In other words, it is necessary to strive to build the science of Islamic law, which is in harmony with the legal science that applies in Indonesia. With the science of Islamic law, the opportunity for Islamic law to play a role in the national legal arena in Indonesia will be more significant because, scientifically, the law will be more understandable and acceptable to the Indonesian legal community. In addition, the existence of the science of Islamic law will be beneficial, together with other legal sciences, in forming Indonesian legal science, which will serve as the basis for the formation of national law.

Unification of Islamic Law in the National Legal System

Unification of Islamic law in national legal systems in Muslim countries can refer to efforts to integrate the principles of Islamic law into national legal systems in a comprehensive manner. This approach aims to create a legal framework harmonizing Islamic law with national law without any separation or parallel applicability. Several Muslim countries have adopted this approach to Islamic law unification, although its implementation varies from country to country. Here are some examples of the unification approach of Islamic law in the national legal system: first, Egypt. Egypt implements a legal system called the "Islamic Law Tribunal" or "Muslim Personal Law Tribunal," which regulates Muslim personal matters such as marriage, divorce, inheritance, and other family laws based on

Islamic law. However, national laws also apply in several general legal matters. Second, Tunisia. Tunisia adopted a unification approach to Islamic law by implementing a "Code of Personal Law" that combines Islamic law principles with those of civil law. This code regulates various aspects of Muslim personal law, including marriage, divorce, inheritance, and other family laws. Third, Turkey. Turkey adopts a laissez-faire approach, where the national legal system does not explicitly recognize religious law, including Islamic law. However, in recent years, Turkey has adopted a series of legal reforms that attempt to integrate elements of Islamic law into civil law selectively. Fourth, Morocco. Morocco adopted a unification approach to Islamic law by adopting a "Family Code" that regulates issues of marriage, divorce, inheritance, and other family law based on Islamic law principles. This code combines the principles of Islamic law with elements of civil law.

This approach to unifying Islamic law may vary in other Muslim countries, depending on each country's social, political, and historical context. Some countries may adopt a more traditional and conservative approach, while others may be more inclined towards a more progressive and inclusive approach. Unifying Islamic regulations in the prison machinery across the country bring together all current Islamic penal policies in Indonesia into a single prison device. The unification of Islamic law is to create solidarity and reality of prisons in Indonesia and to ensure that Islamic regulations are implemented in Indonesia through the values of justice, human rights, and democracy. Efforts to unify Islamic law in Indonesia have started since the beginning of Indonesia's independence. At that time, negotiations between Islam and non-Islam ended with an agreement that Islamic law could be considered one of the sources of state law. This was later contemplated in the formation of the Criminal Code (KUHP), which included Islamic law as one of the legitimate sources of law. However, unifying Islamic regulations in Indonesia faces many obstacles, especially in implementation and supervision.

The unification of Islamic law in Indonesia reviews the various limitations, along with: 1) Differences in interpretation and knowledge of Islamic law: In Indonesia, there are differences in information and interpretation of Islamic rules. Some organisations maintain different perspectives on Islamic information and lessons. This makes it difficult for a unified view of Islamic law to serve as a foundation for unification. 2) Differences in customs: The unique culture and customs of each region in Indonesia also hinder the unification of Islamic regulations. These differences often make Islamic legal regulations non-uniform and result in difficulties in unifying the guidelines. 3) Limited human and economic resources: limited human and economic resources hinder the unification of Islamic law. This process requires human resources, professionals in Islamic law, and a large budget. 4) Absence of agreement: In Indonesia, there is not always an agreement in making choices relating to Islamic law. Different views between optimistic businesses in society often hinder the procedure of unifying Islamic regulations. 5) Political issues: It is undeniable that politics also affect the technique

of unifying Islamic law in Indonesia. Differences in political interests between societal organisations can hinder the unification of Islamic law in Indonesia.

The success of the Islamic law unification process in Indonesia can be assessed from several aspects, among others: First, the realisation of the diversity of Islamic law in Indonesia: By achieving the unification of Islamic law in Indonesia, there will be uniformity in applying Islamic law throughout Indonesia. This will reduce differences in Islamic law decision-making between regions in Indonesia. Second, improving the quality of Islamic law: Unifying Islamic law can improve the quality of Islamic law applied in Indonesia. This process can be done by combining Islamic laws from various madhhabs into a solid unity based on Islam's teachings. Third, strengthening Indonesia's Islamic identity: Unification of Islamic law can be a form of support for Indonesia's Islamic identity. The unity in applying Islamic law will further strengthen Indonesia's Islamic identity in the eyes of the world. Fourth, reducing misunderstanding and conflict: The realisation of the unification of Islamic law can help reduce misunderstandings between social groups and avoid conflicts based on different views of Islamic law. Fifth, Increasing legal certainty: With the unification of Islamic law, it will further increase legal certainty in society. This is because there is uniformity in making Islamic legal decisions which is expected to reduce confusion in making Islamic legal decisions.

The implementation of Islamic law in Indonesia requires an agreement and consensus that can be accepted by all parties, mainly because Indonesia is a country that has a very diverse diversity of religions, cultures and ethnic groups. This agreement and consensus must involve Islamic law experts, scholars, religious leaders, and community leaders. Several things need to be considered in reaching an agreement and consensus on applying Islamic law in Indonesia, such as recognising the plurality and diversity of religions and beliefs in Indonesia.

National legal guidelines in Indonesia that accommodate Islamic regulatory concepts are to be strengthened and affirmed. In addition, it also encourages positive dialogue and dialogue to reach an agreement and consensus in implementing Islamic regulations in Indonesia. This dialogue should involve professionals in Islamic law, students, religious leaders and community leaders. Professionals in the field of Islamic law must continue to increase their potential, both in the knowledge of Islamic law and knowledge of national regulations, to provide constructive input in reaching an agreement and consensus in integrating the ideas of Islamic regulations into the national prison set. In addition, in applying Islamic law, the values of justice and benefit need to be recommended and prioritised in seeking guidelines or fatwas relating to the utility of Islamic regulations. By prioritising settlement and consensus in the software of Islamic law in Indonesia, it is hoped that creating a more just and equitable legal device is better for all Indonesian people without forgetting the essential standards of Islamic regulation.

In Islamic law in Indonesia, the values of justice and practicality are essential in drafting regulations or fatwas related to the application of Islamic law.

the following are some of the values of justice and practicality that are upheld in Islamic law in Indonesia, including, First, justice in identifying cases. The teachings of justice in Islamic regulations require that every case be determined fairly and objectively, without discrimination against any of us. This is encompassed in Islamic regulatory standards such as qishash, where justice and expediency should be the main concerns in imposing punishment. Secondly, the security of human rights as Islamic law protects universally recognised human rights, along with the right to freedom of belief, the right to fitness, the right to attend school, and the right to security from discrimination. Third, maintaining a balance between individual rights and the public interest because, in Islamic law, the hobbies of the general public are prioritised; however, a balance must be maintained with the recognised rights of character. She was fourth, thinking of benefit and practicality. The principle of benefit and expediency in Islamic law requires that every decision benefits society. Fifth, based on ethics and morals because Islamic law in Indonesia prioritises ethical and moral values in every decision and rule. Values, including honesty, integrity, and forgiveness, are upheld in Islamic regulations.

Agus Moh Najib (2008) revealed that Islamic Law could be built in the context of legal science developed in Indonesia by looking at the scientific framework of positive general law that applies in Indonesia. The discussion of Islamic law can be carried out with the following systematics: The first is a discussion of the Nature of Islamic Law and its relation to lawmakers, legal subjects and legal acts. Then it discusses the Sources of Law, the primary sources of law (Qur'an and Hadith of the Prophet Muhammad) and derivative sources of law, such as jurisprudence, qanun, Islamic legal doctrine, and fatwa. Furthermore, the Purpose of Islamic Law, Interpretation or Legal Discovery, and Several Fields of Islamic Law include the principles of family law, civil law, criminal law, constitutional law, public finance law, and the principles of judicial procedure.

To increase the certainty of Islamic law in Indonesia, several things can be done, among others: 1) Establishment of a national Islamic law body: This body is tasked with harmonising and unifying Islamic law in Indonesia. This body can issue fatwas, hold seminars or discussions related to Islamic law, and provide Islamic legal guidance for the community. 2) Preparation of transparent laws and regulations: In preparing legislation, it must be clear and firm regarding the regulation of Islamic law. This will provide legal certainty for the community, so there is no room for different interpretations. 3) Islamic legal education and training: Islamic legal education and training can help improve people's knowledge and understanding of Islamic law. This could involve scholars and experts in Islamic law who are experts in their fields. 4) Strengthening the judiciary: The strength of the judiciary is crucial in ensuring the certainty of Islamic law. Judicial institutions must be independent and objective in making decisions and have good quality human resources who are skilled in applying Islamic law. 5) Improving the quality of Islamic legal services: Improving the quality of Islamic legal services such as judicial services, law enforcement, and the fulfilment of human rights can help improve the certainty of Islamic law in Indonesia. It can also increase public

trust in Islamic legal institutions. Taking these steps is expected to increase the certainty of Islamic law in Indonesia so that people can feel safer and more secure in applying Islamic law.

CONCLUSION

Agus Moh Najib's perspective on Islamic law and Indonesian law has several links and interconnections. As a predominantly Muslim country, Islam plays a vital role in forming laws and policies in Indonesia. Islamic law is a recognised source of law in the Indonesian legal system, and some Indonesian laws and regulations are based on Islamic law principles. However, according to Agus Moh Najib, to maximise the interconnectivity of Islamic law with national law, the first step that needs to be taken is to redesign, reformulate and renovate the ushul fiqh building, which is the basis for the formation of Islamic law without having to tear it down by reviewing existing concepts and theories so that the role of ushul fiqh can be more optimal in developing Islamic legal science that contributes to the formation of laws and regulations in Indonesia. Then harmonisation is carried out between Islamic law and various legal sciences developed in Indonesia regarding subject matter and language. In other words, it is necessary to strive to form Islamic law that is in harmony with legal science in general, which is based on ideal moral norms from the core of Islamic teachings and also considers the culture and empirical realities that exist in plural Indonesian society.

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