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Symbiosis of Mutualism in the Transformation of Islamic Law into National Law in Indonesia

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Abstract

The transformation of Islamic law into national law in Indonesia became a trend after the issuance of the Marriage Law and the Religious Courts Law. The transformation of Islamic law is not synonymous with Islamization. If Islamization can occur unilaterally by Islamic law, then this is not the case with transformation. Transformation needs to involve national law as a legal system that overshadows and legitimizes it. Thus, there is a dialectical relationship, namely the relationship and interaction between Islamic law and national law in harmony or conflict followed by a settlement in the form of assimilation, accommodation/amalgamation or adaptation. This study finds that philosophically the transformation of Islamic law into national law is closely related to the intersection of the two, namely the transformation of enforcement and regulatory authorities, institutionalization of Islamic law, internal uniformity (unification), Islamization of national law, construction of state law based on non-state law, and legal instrumentalization in national development.

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Transformasi hukum Islam ke dalam hukum nasional di Indonesia menjadi kecenderungan setelah lahirnya UU Perkawinan dan UU Peradilan Agama. Transformasi hukum

Islam tidak identik dengan islamisasi. Jika Islamisasi bisa terjadi secara sepihak hukum Islam, maka tidak demikian halnya dengan transformasi. Transformasi perlu melibatkan hukum nasional sebagai sistem hukum yang menaungi dan melegitimasinya. Dengan demikian terjadi hubungan dialektika, yaitu hubungan dan interaksi antara hukum Islam dan hukum nasional secara harmonis atau konflik yang diikuti penyelesaian dalam bentuk asimilasi, akomodasi/amalgamasi atau adaptasi. Kajian ini menemukan bahwa secara filosofis transformasi hukum Islam ke dalam hukum nasional erat kaitannya dengan persinggungan keduanya, yaitu transformasi penegakan dan otoritas pengatur, pelembagaan hukum Islam, penyeragaman secara internal (unifikasi), Islamisasi hukum nasional, konstruksi hukum negara berbasis hukum non negara, dan instrumentalisasi hukum dalam pembangunan nasional.

Keywords: Legal transformation; legal institutionalization; legal unification

Introduction

The positivization[1] of Islamic law in its present meaning and form is the result of the contact of Islamic law with Western law and tradition. Positive law (state) is a statement of human will which is collected in a container called the state, while Islamic law is a divine law which is gathered in a container called religion (Jazuni, 2005). Thus, the positivization of Islamic law is the transformation of God's will into human will in a container called the state.

The positivization of Islamic law has become a tendency after the enactment of the Marriage Law and the Religious Courts Law and has become increasingly intense after the reformation (Suganda & Firmansyah, 2022). According to Triana, in Indonesia there is a trend that shows that the majority of Muslims are increasingly asserting themselves in political power and have aspirations for the formation of laws that are sourced from the norms and values of Islamic law (Triana, 2011). This is reflected in the birth of various laws and regulations whose contents adopt, absorb the soul and principles of Islamic law and pretend to protect and facilitate Muslims.

The positivization of Islamic law does not occur unilaterally, but also involves national law as a legal system that overshadows and legitimizes it. Without involving national law, in terms of substance, structure and culture, positivization is impossible in the context of the unitary state of the Republic of Indonesia.[2] If that happens, Islamic law will remain as a religious law whose binding power is internal. The involvement of the state in supporting its implementation is passive in the sense that it is only limited to affirming it without being accompanied by the provision of infrastructure. For Islamic law which has an individual dimension, this is not a problem. However, for Islamic law which has a communal and systemic dimension, this makes it difficult to implement or even impossible to implement.(A. Q. Azizy, 2004)

Thus, the encounter of Islamic law and national law in the context of positivization is a necessity. Such an encounter presupposes the occurrence of tension/conflict and harmony between the two legal systems as a result of the meeting of two legal systems with different traditions and philosophies. Islamic law positions God as the sole source of law, while national law treats the legislature as the sole locus of the law-making process. No doubt, Islamic law and national law stand on the premise of the existence of a sovereign authority that has a monopoly right to determine the law in their respective territories (Lubis, 2003).[3] The ideal meeting presupposes the occurrence of mutual accommodation of one another as a result of compromise or dialogue as long as it does not cause tension and inconsistency within each other.(Lukito, 2008) In other words, the positivization of Islamic law requires dialectics with national law, namely the relationship and interaction between the two, both harmoniously and in conflict, followed by resolution in the form of assimilation, merging or adaptation.

With this background in mind, the issue that arises and is relevant is how is the philosophical aspect of the transformation of Islamic law into national law? This is important to dispel the impression that the transformation, which in many cases is also called the positivization of Islamic law, is identical to coercion by the majority Muslim community against the minority religious community. In other words, this study is intended as an explanation and at the same time an argument for the importance and necessity of the positivization of Islamic law on the one hand, and a theoretical explanation of the

phenomenon of positivization of Islamic law itself on the other. The analysis in this study is carried out both in the perspective of Islamic law and national law simultaneously. Here the assumption is used that Islamic law on the one hand is one of the elements (materials) forming national law, but on the other hand it is a sparring partner for national law. In the first context, Islamic law is subordinate to national law, while in the second context, the position of Islamic law to national law is balanced and each is independent and has a different area of application. In the second context, Islamic law is universal, not bound and identified as local and Indonesian law, although the influence of local social situations and conditions greatly influences its development and existence.

Discussion

Transformation in the Perspective of Islamic Law

The positivization of Islamic law is possible in a number of alternatives related to the field of Islamic law that is to be positive. Positive Islamic law addresses can also be all citizens or only Muslims. While the methods taken to positivity of Islamic law vary: from the most extreme, namely amending the constitution to the most academic-scientific, namely transforming elements/concepts of Islamic law into national law.

Islamic law whose implementation does not involve the state does not need to be positive. The involvement of the state is only to provide guarantees to every Muslim so that he can carry it out according to his beliefs. Positivization is carried out at least towards Islamic law which basically can be implemented independently by every Muslim, but the involvement of the state can guarantee and improve the quality of its implementation. The point of pressing for the positivization of Islamic law is not in the context of enforcing it, but in the context of ensuring order and smoothness and making it more efficient.

Therefore, the legal address that is positive in this model is limited to the Muslims who are involved in its implementation. Positivization is also possible for Islamic law which because of its universal nature is also accepted by non-Muslims. Or Islamic law whose substance has inspired existing national laws. Such Islamic law meets the requirements for unification, so that it reaches all levels of citizens. In

fact, the use of the term positivization for Islamic law as such is inappropriate. Because, in practice such Islamic law is transformed into national law not through positivization efforts, but through regular legislation and regulation efforts. Positivization becomes a necessity when the Islamic law that is to be positive does not allow its implementation without the intervention of the state, both in regulation, operation and supervision. The address of Islamic law is mainly Muslims, but it is also possible for non-Muslims to be involved in it.

Thus, the positivization of Islamic law as illustrated above is functional in the framework of transforming enforcement authority and further regulation, institutionalization of Islamic law, internal law uniformity and Islamization of national law.

First, Transformation of Law Enforcement and Regulatory Authority. This transformation is academically valid, because it is built on the following historical and philosophical foundations of reality.(Muslim, 2006) First, Islamic law is a law that lives in the midst of society and has largely shaped the legal awareness of society itself. As such, it is natural for the state to take over its management and then facilitate its implementation (Khisni, 2011, p. 227). The involvement of the state to take over such responsibilities is part of the implementation of the duties and functions of the state in the framework of achieving national goals.

Second, the existence of Islamic law in national law (Utama, 2018). As stated in the previous sub-discussion, Islamic law is an integral part of national law on the one hand and the main ingredient of national law on the other. As an integral part of national law, Islamic law gains recognition of its existence side by side with national law. The adoption of a weak legal pluralism policy as an option in the formation of a national legal system does not reduce the existence of Islamic law. In family law, for example, the notion of legal uniformity can only be implemented in the form of procedures, while the legal substance is left in diversity. So that as part of that diversity, Islamic law is still recognized and even strengthened.

Third, Pancasila and the 1945 Constitution of the Republic of Indonesia have provided space for this to happen. The first precept of Pancasila "Belief in One Almighty God" as contained in the Preamble

to the 1945 Constitution affirms its position in the Body of the 1945 Constitution of the Republic of Indonesia Article 29 (1). According to Hazairin (Hazairin, 1981, p. 30) and Ali (Ali, 1999, pp. 7–9, 234), the state based on Belief in the One and Only God listed in Article 29 (1) of the 1945 Constitution of the Republic of Indonesia can only be interpreted in six possible interpretations. Three of them are:

a. within the Republic of Indonesia, something must not happen or occur that is contrary to Islamic principles for Muslims, or contrary to Christian religious principles for Christians, or contrary to Balinese Hindu religious principles for Balinese Hindus, or contrary to the principles of Buddhism for Buddhists.
b. the Republic of Indonesia is obliged to implement Islamic law for Muslims, Christian law for Christians and Balinese Hindu law for Balinese Hindus.
c. Shari'ah, which does not require the assistance of state power to implement it and therefore can be carried out independently by each adherent of the religion concerned, becomes a personal obligation to Allah for each person, which he carries out independently according to their respective religions.

As adherents of a rule of law, as stated in the 1945 Constitution of the Republic of Indonesia, according to Radhie (Radhie, 1997, p. 202), the progress of the nation and state in Indonesia demands the preconditions for the existence of a national law capable of guaranteeing legal certainty for all levels of the people, providing equitable justice, protecting the basic rights and obligations of citizens, regulating orderly life of society and give direction to the development of national life (Rahardjo, 2000, p. 19). One of the basic rights of citizens, as stated in Article 28E (1) of the 1945 Constitution of the Republic of Indonesia, is the right to have a religion and to worship according to their religion.

In the context of the theory of the relationship between religion and the state which adheres to a symbiotic paradigm, religion and the state can relate symbiotically in the sense that they are reciprocal and need each other. Religion requires the state to grow larger and reach a wider territory. On the other hand, the state also needs religion to be

able to develop through spiritual ethical and moral guidance (Wahid & Rumadi, 2001, pp. 24–28).

Al-Mawardi in his magnum opus said that state leadership is an instrument to continue the prophetic mission in maintaining religion and governing the world (Al-Mawardi, n.d., p. 5). Likewise, Ibn Taymiyyah saw that the existence of a power that regulates human affairs is the greatest religious obligation, because without state power, religion cannot stand upright (Taimiyah, 1969, p. 162). Indeed, the statements of Al-Mawardi and Ibn Taimiyah are in the context of an Islamic state, while Indonesia is not. However, considering the reality that the majority of the population is Muslim and most of the elite are also the same, in addition to the constitution having given a special place to religion, the taking over of the authority to enforce Islamic law and its further regulation is not difficult to understand.

Accommodation of sharia banking in the national legal system makes the state the most responsible party in making further arrangements and ensuring its proper sustainability. Islamic banking operations are no longer a matter of individual citizens. The vital function of banking for the economy, it is clear that it is impossible to manage it in this way.

As the party responsible for ensuring the continuity and regulation of Islamic banking, the state must immediately prepare and equip itself by establishing new organizational units and units, or modifying existing ones in such a way as to support the implementation of its responsibilities. The state is also required to provide the necessary infrastructure to support the operation of Islamic banking.

Institutionalization of Islamic Law

The institutionalization of Islamic law is meant to form institutions that guarantee the implementation of Islamic law, because without these institutions the implementation of Islamic law will not work, either by establishing a completely new one or modifying an existing institution in such a way. Of course, this juridical institutionalization coincides with the positivization of Islamic law a quo, although at a technical operational level it will follow later.[4]

Sharia banking in Indonesia is an actual example of the institutionalization of Islamic law. Without first being regulated in laws and regulations as a juridical basis, Islamic banking is impossible to stand and operate. Because as an institution that is very important in the economy that manages funds from and for the community and is connected to a network that forms a separate system, Islamic banking, like conventional banking, requires a principal permit for establishment and an operational license.

Apart from the issue of permits, as stated above, the business characteristics of sharia banking which are different from conventional banking also require separate arrangements. Even issues that are basically neutral, such as institutions, liquidity management and financial instruments, require different arrangements. In other words, Islamic banking with its special character cannot get its existence only with laws and regulations which were originally intended for conventional banking, even though it uses the title of national banking.

The positivization which is intended as the institutionalization of Islamic law is for internal Muslims to be interpreted as the implementation of religious obligations. In accordance with wasilah (means) theory, dealing with conventional banking which is based on interest is not justified according to Islamic law and as an alternative is Islamic banking which is not based on interest. Thus, it is the obligation of Muslims to deal with Islamic banking. However, this obligation will not be carried out without first having laws and regulations that regulate it which are the result of the transformation of Islamic economic law. Therefore, as a means for obligatory purposes, the transformation of Islamic economic law into national law in the form of sharia banking law is also an obligation. As an obligation, its implementation will bring rewards and vice versa if it is not attempted it will bring sin.

In terms of ushul fiqh the positivization of Islamic law is part of ijtihad tathbiqi, namely ijtihad which is oriented towards the practical application of Islamic law in everyday life. Ijihad tathbiqi is a response to the trend of legal positivism in the modern world. Ijtihad tathbiqi assumes that Islamic law that has been produced, either through ijtihad insya'i or ijtihad intisabi, is not always ready to use. Therefore, the implementation of ijtihad tathbiqi requires the involvement of the state as the actor through an agency or institution

entrusted with the authority to carry out legislation and regulations (Fanani, 2008, p. 332).

Internal Legal Uniformity (Limited Unification)

Starting from the character it has and the long journey it has gone through, Islamic law has developed not only with its complete library but also its scholarship. The tradition of Islamic legal thought from the beginning has been colored by the spirit of freedom of thought which is very individualistic. This means that the style of Islamic law is strongly influenced by individual mujtahid factors/thinkers as the influence of social, cultural and political factors that surround it. Therefore, Islamic law appears with its territorial character, so that it is known as the Hijaz school, the Iraqi school, the Sham school, and so on (A. Q. A. Azizy, 1999, pp. 3–5). In its development, great thinkers were born who greatly colored the thought of Islamic law and the fragrance of its name exceeded the fame of the region in which it lived. So, there was a shift in the mention of Islamic law from originally being attributed to the area where the thinker lived to being attributed to the name of the thinker, so that it became known as the Hanafi school, Maliki school, Shafi'i school, Hanbali school, and so on.

When the Islamic territory expanded beyond the Arabian Peninsula, Islamic law with a regional and personal pattern developed according to the place, time, situation and traditions that surrounded it, although its name still referred to the name of the dominant thinker (imam madhhab). This is because the ijtihad developed by thinkers then refers to the principles and techniques of ijtihad elaborated by the priests of the schools they follow. In other words, recent Islamic law thinkers are followers of certain madzhab imams, so that the resulting Islamic law cannot be separated from the madzhab they follow, both in terms of its name and substance. What happened then was that in each madhhab there was a slightly different style of thought even though the methodology used was the same.

The various styles of Islamic legal thought on the one hand make it flexible because it offers many alternative solutions in almost every legal case,[5] but on the other hand it can cause problems. First, the dominance of legal material originating from --and formed in settings--different areas socially, politically and culturally, so that sometimes it cannot be immediately operational. Second, when the

implementation of Islamic law is about to be taken over by the state, difficulties arise in terms of which Islamic law is to be applied. Such conditions make it increasingly difficult to operate in a legal system with a civil law tradition that places more emphasis on certainty.

Legal positivization is thus faced with selecting one of the various available alternatives (takhayyur) and combining several alternatives (eclectic/talfiq) (Fanani, 2010, pp. 294–295; Hefni, 2022; Mu'allim & Yusdani, 2004, pp. 147–148).[6] In this context, fixation on one particular school of thought no longer has a place. In the tendency to choose from and combine several alternatives, the consideration is not only on the strength of the supporting arguments, but more than that on the benefits and ease of implementation in the field. Because, what is the use of a strong argument if its implementation creates difficulties. In fact, both the strong and the not/less strong arguments are equally Islamic law which gains legitimacy from holy texts.

As a result of the selection or merging of alternatives as intended, there is uniformity and unity related to Islamic law material which has been positive (Sirajuddin & Zubaedi, 2008, p. 142). This not only facilitates further regulation by the regulator and its implementation by its agents, but also fulfills one of the characteristics of written law, namely its certainty.

In addition to guaranteeing certainty, uniformity in the regulatory material for sharia banking is also a prerequisite for the implementation of the provisions in the said regulation. Not to mention different regulations, just different interpretations can have fatal consequences for the sustainability of Islamic banking operations. In this context the elaboration of the DSN-MUI as the only institution authorized to issue Islamic economic fatwas is a clear example. You can imagine what will happen if sharia principles which form the basis of sharia banking operations are issued by more than one institution. Of course, there will be chaos and uncertainty in the business world.

On the other hand, the uniformity and unity of Islamic law material as a result of positivization has the potential to cause internal inconsistencies within it. This is because the origins of various sources, each of which rests on a different basis of thinking, can result in one provision not being connected to another. Therefore, the pouring of Islamic law into statutory regulations must be preceded by the formulation of its principles. These principles must be able to

connect and string together various provisions in existing regulations, so that when there are differences in interpretation, they must be returned to the principles in question, not to the initial thoughts on where the provisions came from. Thus, sharia banking law may appear as a new entity with new features and characteristics as well.

Islamization of National Law

Islamization here means the drafting of national law which does not conflict with common sense, the reality of Indonesian-nationality, and the laws elaborated in the Qur'an (Fanani, 2008, p. 379). In other words, recognizing and believing in national law or part of national law that fulfills these qualifications as Islamic law, even though the initial concept/draft was not intentionally intended to posit Islamic law. This Islamization means passive. Thus, Islamic law in products of legislation is not limited to the results of positivization but also the results of legislation and regulation in general.

Islamization with such a meaning is important in the context of the dialectic of Islamic law and national law. As stated above, dialectics presupposes the relationship and interaction of Islamic law and national law both in an atmosphere of harmony and conflict followed by a resolution. Dialectics is not a matter of winning and losing, but a question of how to reach a resolution. Resolutions can occur if each of them is willing to take and give in certain levels and standards.[7]

To be able to proceed in an atmosphere of take and give, internally Islamic law must improve. This need to improve is relevant when positivization is to be carried out on Islamic law which is materially typical of Islam, while the positive law to be established is intended for all citizens. In this context, it is necessary to distinguish between essential elements in Islamic law and non-essential elements. The essential elements of Islamic law are the underlying principles and principles, while the non-essential elements are the concrete norms. In the context of reforming the starting point of positivization is an essential element of Islamic law, not a non-essential element (Azhar Basyir, 1983, p. 31; Mu'allim & Yusdani, 2004, p. 154). If that happens, then rejection from non-Muslim groups can be minimized, unless an atmosphere full of suspicion is put forward.

On the other hand, the reality outside of Islamic law that must be accepted in the context of take and give above needs to be positioned as 'urf. As an 'urf, reality is adequately tested whether or not it

conflicts with the principles of faith, a sense of justice and humanity, and the provisions of the holy texts. If it is not contradictory, then this reality is not only welcome to become material for statutory regulations, but at the same time it can also be claimed as part of Islamic law. Thus, through the Islamization of national law as stated above, Islamic law appears in an inclusive manner, not exclusively.

Through the Islamization of national law, provisions in statutory regulations that are neutral in banking operations, so that they apply to sharia banking as well as national banking, are also seen as Islamic law. Such matters include the principle of prudence, the principle of knowing your customer, implementing good corporate governance, and so on.

National Law Perspective

In the perspective of national law, the dialectic of positivizing Islamic law is nothing but an acknowledgment of its existence. Because in the dialectical process, national law is in a position to give. However, it does not mean that because it gives national law then it is in a disadvantaged position. In contrast, with the positivization of Islamic law, national law benefits from both a formal and material standpoint. From a formal perspective, Islamic law has been positive, meaning that there is no longer any difference between the two, at least in the area of related law. From a material perspective, the advantages of national law can be seen from the wider material contained.

The encounter between Islamic law and national law represents a compromise between two contradictory legal schools. First, the flow with the concept of living law, as stated by Eugen Ehrlich, which outlines the need to accommodate living law in society in statutory regulations or at least not contradicting them. Second, the flow that pioneered the use of laws and regulations as a means of community renewal (Hartono, 2006, pp. 32–33). Compromise is expressed in the form of a balance of the need to make changes and reforms to community law through legislation on the one hand, and the need to pay attention to socio-cultural values and realities that live in society, so that the intended change will not be uprooted later because it will result in the emergence of shaking (Hartono, 2006, p. 34).

a. Legal Development Based on Recognition of Non-State Law (Nationalization of Islamic Law)

The history of law in Indonesia is a long struggle between the idea of legal uniformity and the fact of pluralism. Legal uniformity cannot be separated from the ideology of positivism and nationalism of the Indonesian state, in which all components of the nation must be part of a single entity. Applicable law must also form a single unit in which the state acts as the party responsible for making law. However, what happens in practice is not as easy as one would like it to be, bearing in mind that Islamic law and customary law are ingrained in society.

According to Lukito, the formation of national law actually strengthens legal pluralism in Indonesia (Lukito, 2008, pp. 315–317). The state responds to encounters with laws outside the state, especially Islamic law, by inviting them to join. For the government, blocking the entry of non-state law into national law will hinder national development as a whole. Recognition of non-state law is not only to gain political support, reduce the potential for conflict in a multi-ethnic society, or for other purposes such as expanding the application of state law. Such acknowledgment is often intended to increase democratic participation or to maintain the social diversity that lives in a country.

The granting of recognition of Islamic law is a logical consequence of the state's desire to launch its political agenda, so that the response given by the state is measured based on the benefits to be obtained by the state and the bargaining value of Islamic law when dealing with the state. The greater the pressure on the state, the greater the tendency of the state to provide a positive response in making national laws. The accommodation given to Islamic law is proportional to the influence of Muslims in the state (Lukito, 2008, pp. 504–505).

Accommodation of Islamic law by the state to a certain degree is seen as a form of nationalization of Islamic law.[8] The point is the recognition of its existence. This is based on the historical fact that apart from having existed for a very long time since the existence of Muslims in Indonesia, Islamic law has also been entrenched in such a way that it has become legal awareness in society. On the other hand, Islamic law accommodates far beyond customary law, for example, due to its wider scope and scope. The reality that Muslims are the majority cannot be denied. In addition, the universal character of Islamic law allows it to be applied in various

Muslim societies with different ethnicities, cultures and customs, even non-Muslim communities. Thus, the positivization of Islamic law at the same time also means national legal unification or at least approaching it. In the perspective of law-making theory, it seems that the accommodation of Islamic law to become state law in Indonesia is a form of determining the values that apply in society.

Islamic economic law is accommodated by national law and becomes an integral part of sharia banking law. This accommodation occurred because Islamic economic law was seen as an alternative to conventional banking law which had been accommodated earlier. Thus, the accommodation of Islamic economic law in sharia banking law is a very significant contribution to national law.

b. Law as Development Instrument

The national legal system developed in Indonesia is adapted to the country's development projects. Therefore it is the responsibility of the state to develop laws to meet general needs in order to achieve national goals. In this context, since the beginning of the New Order government, law has functioned as an instrument of national development, namely a means of social engineering. A change can be achieved with law or law is a means of changing society. This is the core of the teachings about making law a means of social engineering (Lukito, 2008, p. 286).

According to Rajagukguk, during the New Order government, law functioned as an ideological framework for changing the structure and culture of society (Hartono, 2006, p. 27; Rajagukguk, 1983, p. 72). This function is described as a protection function which includes four sub-functions, namely guaranteeing security and order (national stability), supporting development, ensuring justice, and educating the public towards social attitudes expected by the Constitution 1945.

The positivization of Islamic law can also be understood in the context of making law an instrument of development. The introduction of Islamic banking in Law Number 7 of 1992 concerning Banking is a good example in this regard. As stated in the preamble clause considering letters (a) to (e), the drafting of the law is based on the following thoughts. First, national

development needs to proceed in a sustainable manner in order to realize a just and prosperous Indonesian society based on Pancasila and the Constitution 1945. Second, banking has a strategic role to support the implementation of national development. Third, the national banking system must respond responsively to developments in the national and international economy which are always moving fast. Fourth, the existing banking law and several related laws are no longer in accordance with these developments, so a new banking law must be drafted.

Indeed, in the preamble, body and explanation of the law, the reasons for the introduction of Islamic banking are not explicitly stated. However, the general explanation states that the steps that need to be taken in order to improve the banking system in Indonesia include expanding opportunities to carry out activities in the banking sector in a healthy and responsible manner, as well as preventing practices that are detrimental to the public interest. The expansion of opportunities to carry out activities in the banking sector is another expression of the permissibility of banking practices that are not based on interest. Communities whose needs for banking services are not served by conventional banking, for reasons of religious belief, for example, are expected to be served by these banks. Thus, the mobilization of potential funding sourced from within the country will run well, as an alternative to declining revenues from petroleum and diminishing funding sources sourced from abroad (Kara, 2005, pp. 127–134).

The instrumental function of Islamic banking is clarified in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking. In the general elucidation of the new banking law, it is explicitly stated that there is a need to increase the role of Islamic banks to accommodate the aspirations and needs of the community. The law provides the widest possible opportunity for the public to establish Islamic banks, including UUS in conventional commercial banks. If the UUP, as stated above, was based on the motive of expanding the reach of banking services, then the new UUP was based on the motive of restructuring the national banking system after the devastating economic and monetary crisis.

Conclusion

At the end of this paper, the following conclusions can be stated. The transformation of Islamic law into national law does not occur unilaterally nor is it solely for the benefit of Islamic law. This transformation benefits both parties, even when the transformation assumes Islamic law to be subordinate to national law because of its existence as material. With this transformation, Islamic law has become an integral part of national law which has implications for aspects of its applicability and enforcement which are no longer solely based on internal strength but have also become the responsibility of the state. The transformation of Islamic law into national law is none other than the transformation of enforcement and regulatory authorities, the institutionalization of Islamic law, internal uniformity (unification), the Islamization of national law and the nationalization of Islamic law, the implementation of legal development based on non-state law, and the instrumentation of law in national development in the other side. [*w*]

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1. The positivization of Islamic law is defined as an effort to make Islamic law a part of state law that is applicable and binding for Muslim and/or non-Muslim citizens whose enforcement is carried out by the state apparatus.
2. Historically, Islamic law has been opposed to qanun. If fiqh or Islamic law is a law that is believed to have come from Allah SWT through the Qur'an and Sunnah, then the qanun is a man-made law relating to society, not a matter of worship. At first the qanun contained the administrative law of the state which was transferred from the government of the Roman Empire. However, in its later development, qanuns are identified with laws in Islamic countries/kingdoms or countries where the majority of the population is Muslim. In this case, the materials of the qanun are: (a). matters relating to fellow human beings, especially the mu'amalah area or worldly matters; (b). Islamic law which has clear main provisions in the Qur'an or Sunnah and at the same time constitutes a public policy on the basis of 'urf, istihsan, or mashlahah; (c). the choice of law from the many differences of opinion among Islamic jurists that must be obeyed by the whole community; (d). arrangements that bypass the provisions of applicable Islamic law on the grounds of public interest (mashlahah mursalah); and (e). legislation as a

product of the legislature or executive institution that has a legislative function.

3. During the New Order regime, the making of national laws, especially in the economic field, was dominated by the executive in the form of a Presidential Decree. This is an effect of the domination of the executive over the legislature, let alone the judiciary. Control from other agencies on executive behavior is not or is not working.
4. Indonesia has experience in disassembling and establishing state institutions. After the reform, many new institutions were formed, especially in the field of law. Any of these changes, whether related to the formation of new institutions, changes to the organizational structure of existing institutions or the dissolution of certain institutions, are always carried out simultaneously in a juridical manner with the passing of laws and regulations. At one time the enactment of a law was intended to form a certain institution. At other times, the enactment of a law is intended to form a new institution and at the same time dissolve other institutions, reducing the functions, duties and powers of other institutions. At other times, the enactment of a law is only intended to dissolve a certain institution. Cases of disassembly, establishment or change of institutions are more common through statutory regulations under laws, especially Presidential Decrees (Keppres).
5. This is claimed as a provision of convenience for Muslims and is a form of mercy from God as meant in a hadith which states that differences of opinion among my people are mercy (*ikhtilafu ummati rahmatun*).
6. This method follows the tendency of Muslim reformers in dealing with issues of modernity. As a result of the lack of a methodological basis, this method has weaknesses and failed when implemented in the reform movement in the modern period.
7. The meaning of the concept of take and give here is the attitude of being willing to accept conceptions from outside Islamic law (take) in addition to the desire to receive conceptions of Islamic law (give), or the attitude of accepting conceptions from outside Islamic law gracefully and giving them a place in the positive law that is being formulated. (give) in addition to the desire to get a place in the positive law intended for the conception of Islamic law (take).
8. In contrast to the use of the term nationalization in an economic context which means the taking over of ownership of private or foreign companies by the state, nationalization here is defined as the state's recognition of Islamic law. The difference lies in the status as owner. In the nationalization of companies all ownership rights have been transferred from the private or foreign as the original owner to the state as the new owner absolutely. Meanwhile, the nationalization of Islamic law in no way affects the claims and ownership status of Muslims over the nationalized law. That is, even though it has been appointed as state law, positive Islamic law is still Islamic law, the implementation of which still fulfills the qualifications of worship.

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