Sharia in Secular State
The Place and Models for Practicing Islamic Law in Indonesia

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Abstract: In Islam, the complexity and uniqueness of relation of state and religion can be traced back in history of the relation of Islamic law and state. The purpose of this study is to describe the place of Islamic law in Unitary State of Republic Indonesia and the models or alternatives that can be used to practice Islamic law. This research is a kind of non doctrinal qualitative legal research which included some problems, policy and law reform based research. The subject of this study is the substance and norms of sharia that has been accommodated by Indonesia legal system or has been applied through its protection. Data was collected from the book or documents. From this study, it can be concluded that although officially, Indonesia is not religious state, philosophically the purpose of sharia has been accommodated in Indonesia legal system, legally there is no obstacle to absorb sharia values and norms into positive law as long as it is not contrary to the constitution. This study also concluded that practically, there are some alternatives that can be used by Muslims in practicing sharia. This result implies that there is no need for Muslim to establish an Islamic theocratic state in order to practice comprehensive sharia.

1 INTRODUCTION

Relation of state religion is a complicated and unique throughout its history. In Islam, the complexity and uniqueness can be traced back in early history of this religion. All Muslims agree to made the prophet Muhammad SAW (Peace be Upon Him) a role model for them. However, they differ in determining what the main mission of the prophet Muhammad is, and how to make the prophet a role model?

Personally, Muhammad himself stated that he was sent to complete morals. In other words, his mission is ethical and moral not a political. However, when he immigrated to Medina, he was entrusted with the position that some experts considered the position of a head of state.

Through his book entitled *Muhammad Prophet and Statesman*, Montgomery Watt argues that Muhammad was not only a Prophet but also a statesman. (Watt, 1961: 94-95). This is a unique role. Because it seems that Muhammad combined spiritual religious as well as worldly political authority. The impact of this uniqueness, experts are different in many respects. For example, is the state of Medina a religious or a civil state? Whether Muhammad political or religious leader.

Ali Abd al-Raziq in his book *Islam and The Principles of Government* (*al-Islam wa Ushul al-Hukmi)* argued that the Prophet Muhammad remained a moral leader not a political leader. (Abd al-Raziq, 1985). But some other experts asserted that Muhammad SAW, at Medina has actually become a statesman or head of state.

In the modern age, Muslims broadly still divided into two: a groups who want to make Islam as political ideology and the other who want to place Islam as a source of ethic, moral and spiritual guidance. Further differences can be traced in various things such as in determining the form of the state of Medina; relation of religion and state; relation of Islamic law and state; definition of Islamic State; the way of Muslim countries placed Islamic law in their respective constitutions of the state; as well as the model of Islamic sharia implementation in each country.

The Islamism movements that make Islam an ideology both nationally and globally always pursue the aspirations and demands to implement sharia totally (*kaffah*) and formally through state

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instruments. Islamism grows out of a specific interpretation of Islam, but it is not Islam: it is a political ideology that is distinct from the teaching of the religion of Islam. (Tibi, 2012:1)

According to Pew Research Center (2013) there are 72 % of Indonesian Muslims who favor making Islamic law the official law in their country. In other words, there are some Muslims who feel that legal system of Indonesia not yet fully accommodate sharia law.

The problem always arises when in its effort to fight for the formalization or transformation of Islamic law into national law, they use only one model, the rigid, exclusive, conservative, literalist one. Base on research by Pew Research Center (2013) there are 45 % of Indonesian Muslims who say hat sharia has single interpretation. Muslims who hold this opinion tend to see the other interpretation was wrong. As a result they prone to be exploited by Islamism radical ideology who always use sharia as one of their agenda. Survey conducted by Pew Research Center (2015) finds that 4% of Indonesian Muslims supported the radical ideology carried out by ISIS (Islamic State in Iraq and Syria). If translated into real population, it is about 10 million Muslims (Kompas, 2015). For them, sharia cannot be fully implemented in Indonesia because Indonesia is secular state.

Arskal Salim in his book *Challenging the Secular State; The Islamization of Law in Modern Indonesia* argues that attempts to formally implement sharia in Indonesia have always been marked by a tension between political aspirations of the proponents and the opponents of sharia and by resistance from the secular state. The result has been that sharia rules remains tightly confined in Indonesia. (Salim, 2008).

Contrary to what is said by Salim, this study argues that what is tightly confined is just one of several model of sharia implementation, that rigid exclusive and literalist model. This study aims to explain the place of Islamic law in Secular Unitary State of Republic Indonesia and the models that can be used to practice Islamic law.

The fundamental theory used in this research is the theory of secular state presented by Ahmet T. Kuru and the theory of the relationship between Islam and state presented by Munawir Syadzali. Ahmet T. Kuru, in his book *Secularism and State Policies toward Religion* divided the state base on its legislature and its policy toward religion into three classifications; religious state such as Iran, Saudi Arabia, Vatican, secular state and anti religious state such as North Korea, China and Cuba. Secular state can be divided into two: secular state with an established religion and officially favor one like Greece, Denmark, England, secular state that officially favor none like United State, France, Turkey. (Kuru, 2009:8). See Table 1.

Lubna A Alam in his article *Keeping The State Out: The Separation of Law and State in Classical Islamic Law* said that the classical era of Islamic history, which ended at the beginning of the sixteenth century, saw the rise of Islamic states as well as the formation of a complex system of Islamic law. From its very beginnings, the content of Islamic law developed largely free from political influence and pressure (Alam, 2007).

Khaled Abou El Fadl in his article**,** *Islam and the State: A Short History* said although, historically, jurists played important social and civil roles and often served as judges implementing the sharia and executive ordinances, for the most part, government in Islam remained secular. Until the modern age, a theocratic system of government in which a church or clergy ruled in God's name was virtually unknown in Islam. (Abou El Fadl, 2003:14).

According to Sjadzali, among Muslims there are three schools of relations between Islam and the state. Firstly, those who hold that Islam is not merely a religion in the Western sense, that is, only concerning the relationship between man and God, Islam is a perfect religion that governs all aspects of life, including the life of the state. Supporters of this school include Hasan Al-Banna, Sayyid Qutub, Muhammad Rashid Ridha and Al-Mawdudi. Secondly, those who hold that Islam is a religion in the Western sense, which has no relation to state affairs. According to them, the Prophet Muhammad was just an apostle like the previous apostles, with the task of bringing people back to a glorious life with high regard for noble character, and the prophet was never meant to establish and head one country. Supporters of this flow are Ali Abd al-Raziq and Thaha Husein. Third, those who hold that in Islam there is no constitutional system, but there is a set of ethical values for the life of the state. Supporters of this school include Mohammad Husein Haikal. (Syadzali, 1990:1)

Theoretically or conceptually, sharia is God's Will in an ideal, general and abstract form, while Islamic law (*fiqh)* is the product of human attempt to understand God's Will. Khaled Abou El Fadl in his book *Speaking in God's Name: Islamic Law, Authority and Women,* said that the sharia is God's Will in an ideal and abstract fashion, but the *fiqh* is the product of the human attempt to understand God's Will. In this sense, the sharia is always fair,

just and equitable, but the *fiqh* is only an attempt at reaching the ideals and purposes of sharia. According to the jurists, the purpose of sharia is to achieve the welfare of the people, and the purpose of *fiqh* is to understand and implement the sharia. (Abou El Fadl, 2014). In his book entitled *Islam and the Challenge of Democracy,* Khaled Abou El-Fadl said that sharia as conceived by God is flawless, but as understood by human beings is imperfect and contingent. (Abou El-Fadl, 2004:34) In his article, *Sharia in the Perspective of a Legal State Based on Pancasila (Syariat Islam dalam Perspektif Negara Hukum Berdasar Pancasila***)** Nurrohman Syarif said that sharia or Islamic law has a number of characters. First, it contains a sacred value and personal because it comes from God and related to faith. Secondly, it has a moral content. It doesn't only speak of rights and obligations but talk about what should be or recommended to be done and what should not be done through the inner conscience by a mature and sane person (*mukallaf*). The thirdly, Islamic law is not totally dependent on a particular country. Because, it was developed by legal experts independently. The fourth, Islamic law is flexible and dynamic. Because it can basically change if there is social change. It is dynamic because it can develop in accordance with the development of human civilization. The fifth, it is rational, because it generally can be understood and in line with common sense or scientific explanation. (Syarif, 2016). Although Islamic law is a 'sacred law', it is by no means essentially irrational; it was created not by irrational process of revelation but by a rational method of interpretation, and the religious standards and moral rules which were introduced into the legal subject-matter provided the framework for its structural order.(Schacht,1983:4)

In his book *Philosophy of Islamic Law (Filsafat Hukum Islam)*, Hasbi Ash Shiddieqy said that Islamic law should be guided and developed based on a number of principles, namely: 1) eliminate narrow-mindedness (*nafyu al-kharaj)*. 2) minimize burden (*qillatu al-taklif*). 3) in line with human welfare 4) realizing equitable justice 5) putting the mind over the text of sharia in case of conflict between the two. 6) each person assumes his own responsibility. (Ash Shiddieqy, 1975: 73-92).

In his book *Maqashid al-Shari'ah as Philosophy of Islamic Law, A Systems Approach*, Jasser Auda quoted Ibn al-Qayyim's (d. 748 AH/1347 CE) statement: "Shari'ah is based on wisdom and achieving people's welfare in this life and the afterlife. Shari'ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shari'ah, even if it is claimed to be so according to some interpretation" (Auda,2007).

In general, the application model of Islamic sharia in some countries can be divided into three namely: exclusive-textual, inclusive-substantial, and combination. These models cannot be separated from the role of religion in politics. In his article, *Religion within The Nation of Pluralistic Society (Agama dalam Pluralitas Masyarakat Bangsa*,) Masykuri Abdillah said the role of religion in politics can be classified into three forms. Firstly, religion as a political ideology; secondly, religion as ethical, moral and spiritual base and third, religion as sub-ideology. Countries that place religion as ideology tend to practice religious teachings formally as positive law and take a structural approach to socialization and institutionalization of religious teachings. Countries that place religion as an ethical, moral, and spiritual source tend to support cultural approaches and reject structural approaches in terms of socialization and institutionalization of religious teachings. This means that the implementation of religious teachings should not be institutionalized through legislation and state support, but enough with the consciousness of religious people themselves. Countries that place religion as sub-ideology tend to support a cultural as well as structural approach by involving religious teachings in public policy making in a constitutional, democratic and non-discriminatory manner. (Abdillah, 2000) See Table 2.

2 METHODS

This research is a kind of non doctrinal qualitative legal research which covered some problems, policy and law reform based research **(**(Dobinson and Johns, 2007:20)

The subject of this study is the substance and norms of sharia, both private and public, that has been accommodated by Indonesia legal system or has been practiced through its protection. Data was collected from the book or documents that have been published. The main data are drawn from the Indonesian constitution (UUD 1945) and laws designed to fulfil the aspirations of Muslims in general or to fulfil the demands of political parties that carry Islamic ideology. Data will be classified and analyzed to explain the place of Islam and its sharia in Indonesia legal system and the model for practicing sharia in Indonesia. The place of sharia

was be analysed by comparing the constitution of Indonesia with others. While the model of practicing sharia was be analysed through cultural, structural and combination model. This study was based on assumption that practicing sharia is not the same with formally implement sharia.

3 RESULTS AND DISCUSSION

3.1 Results on the Place and Models for Practicing Sharia

The study shows that although Indonesia is a secular state, sharia occupies an important position in the national legal system in Indonesia. The ideology of the State of Indonesia is Pancasila. Literally, the word Pancasila means five principles (from a Sanskrit word: *pance,* five, and *sila, principle*). In fact, the term Pancasila was used by Empu Prapanca in his well-known book entitled *Negarakertagama,* and likewise by Empu Tantular in his famous work entitled *Sutasoma.* These two writers were great thinkers and poets who lived under the Hindu Kingdom of Majapahit during the reign of Hayam Wuruk. (Ismail, 1995:4)

However, it can be accepted by Muslims as the final ideology because all its principle in line with Islamic teachings. Substantively, the objective of Islamic law is to provide protection for freedom of thought (*hifdzu al-aqli*), religious freedom (*hifdzu al-din*), property rights (*hifdzu al-mal*), family rights (*hifdzu al-nasl*) and the right to life (*hifdzu al-nafs)* has been included in the Indonesian constitution. The value of justice, benefit, wisdom and mercy had also been included in the Indonesian Constitution.

Compared with the constitution of Medina, the Indonesian constitution substantially contains a number of the same principles such as the principles of monotheism, unity and togetherness, equality and justice, religious freedom, defending state, preserving good tradition, supremacy of sharia and the politics of peace and protection.

Like *Pancasila* which can be a paradigm for all citizens in their life as citizens, sharia is also a paradigm for all Muslims in private life and community. If the sharia as ethical and moral guidance for Muslims is born out of belief, *Pancasila* is the ethical and moral guideline born from the agreement of the founders of the nation.

In line with the role of religion in political life, the model of Muslims in practicing sharia in Indonesia can be divided into three, exclusive textual, inclusive substantial, and combination.

The first model is usually trying to implement sharia as mentioned in the text of the Qur'an, prophet tradition or in the text of standard works recognized by its authority in explaining Islamic law. This model is based on the assumption that the sharia has perfectly regulated all aspects of life. Sharia after the prophet Muhammad no longer experiences the process of evolution. Therefore, the duty of Muslims is to apply it when the provisions are clear in the text of the Qur'an or prophet tradition (*al-Sunnah*). If there is no provision, then they can use analogy or individual reasoning (*ijtihad)*. Muslims do not need to take other legal systems outside of Islam. Sharia is a law of God that can not be known its true content except by the experts, i.e. Jurist (*faqih*, mujtahid*)*. Therefore, any legislation made by a legislature must be approved by a sharia expert, and the sharia expert has the right to veto any laws deemed inconsistent with the sharia. The first model is commonly practiced privately in private matter.

The second model, it is try to practice the Islamic sharia by looking at the concepts or ideas that exist behind the text. If the main idea has been captured, then its application can be carried out flexibly in accordance with the times and places. This model is based on the assumption that every legal provision in Islamic law has its reasoning and purpose. Therefore, the proponents of this model do not object if Islamic law undergoes evolution. They are also relatively easy to accept any legal system as long as the legal system upholds justice, equality, freedom, brotherhood and humanity which are the core of sharia. Sharia is applied openly through accepting "external elements" such as local custom and thoughts coming from outside Islam. There is no monopoly in the interpretation of sharia, and therefore, there is no need for "sharia supervisory" institutions that monopolize the interpretation of sharia. The second model was commonly practiced in public life.

The third model is combination. In practicing sharia, they divided it into two; purely religious teaching that should be done without any question or reasoning ,(*ta'abbudi)* and what is understood by reason (*ta'aqquli)*. They sort the sharia into two, private and public. In private law, they tend to be textual exclusives because it is part of *ta'abudi*, but in public law, they tend to be substantially inclusive. The choices taken by each person, community or country will depend on the legal politics embraced by them. See Table 3

3.2 Discussion on the Place and Models for Practicing Sharia

Why philosophically, sharia occupies high level in Indonesia legal system? Philosophically, the substance of Islamic law is in line with the substance contained in the Indonesian Constitution. The constitution of Indonesia and the constitution of Medina in the time of the prophet have the same or similar principles according to Harun Nasution and Munawir Sjadzali.

Harun Nasution, in his paper *Islam and the System of Government as Developing in History* (*Islam dan Sistem Pemerintahan Sebagai yang Berkembang dalam Sejarah*) said that the principle of monotheism is mentioned in article 22,23,42,47 in Medina Charter, it also mentioned in the first principle of Pancasila, article 9 and 29 of Indonesia Constitution (UUD 1945). The principle of unity and togetherness is mentioned in article 1,15,17,25 and 37 of Medina constitution as well as mentioned in the third principle of Pancasila, article 1 verse 1, article 35 and 36 of UUD1945. The principle of equality and justice is mentioned in article 13, 15, 16,22,24,37 and 40 of Medina Constitution. It also mentioned in the fifth principle of Pancasila, article 27, 31, 33 and 34 of Indonesia's constitution. The principle of religious freedom is mentioned in article 25 of Medina Constitution it also mentioned in article 29 verse 2 of UUD 1945. The principle of defending state is mentioned in article 24, 37, 38 and 44 of Medina constitution. It also mentioned in article 30 of Indonesia's constitution. The principle of preserving good tradition is mentioned in article 2 until 10 of Medina constitution. It also mentioned in article 32 Indonesia's constitution. The principle of supremacy of sharia is mentioned in article 23 and 42 of Medina charter. (The disputes are ruled based Allah rules and the judgment of Muhammad SAW). This principle is not explicitly mentioned in Indonesia's constitution, but religious norms was adopted as logical consequence of implementing the first principle of Pancasila and article 29 of Indonesia's constitution. The principle of politics of peace and protection is mentioned in article 15,17,36,37,40,41,47 (peace and internal protection) as well as in article 45 (peace and external protection) of Medina constitution. In Indonesia's constitution, this principle mentioned in preamble, article 11and 13. (Nasution, 1985). See Table 4

Munawir Sjadzali, in his book *Islam and Government (Islam dan Tata Negara)* said the foundations laid down by Medina Charter as the basis of state for the plural society in Medina are : 1) all Muslims although from different ethnic or tribe are one community 2) the relationship between Muslims community and others is based on principles (a) good neighboring (b) to help each other in facing common enemy (c) defending who are persecuted (d) giving advice to each other and (e) respecting religious freedom. In addition, Sjadzali said that Medina charter that often called by many political scholars as the first constitution of Islamic state not mentions state religion. (Sjadzali, 1990). In the Medina charter, the meaning of the *ummah* is extended, it includes not only the Muslim community but encompasses all citizens. (Al-Syarif, 1972)

If compared to other Muslim countries in placing Islamic law in their constitution, Indonesia can be paced in the third grade. (Nurrohman, 2002:17) See. Table 5.

Indonesia is like Turkey in choosing secular state for a Muslim-majority society. In fact, in the Muslim world, twenty out of forty-six Muslim-majority states are secular, including Indonesia, as they at least, do not declare Islam as official religion, and Islamic law does not control their legislative and judicial processes. (Kuru, 2009). However, in Indonesia Islamic law has entered into the life of the state through structural and cultural processes, through the transformation of values, norms or symbols. As a source of ethics, morals and spirituality, sharia for Muslims is a living paradigm that can enter into various aspects of life, including when they live in a secular state.

There is no correlation between the degrees of state in placing the sharia formally in their constitution with the degree of the state in practicing sharia. For instance, although Indonesia placed only in the third grade, but the values of sharia which are practiced in Indonesia are better than Iran. Base on Islamicity index made by Rehman and Askari, Indonesia ranked at 140, higher than Pakistan that ranked at 147, Egypt 153, and Iran at 163. (Rehman and Askari: 2010). This is because sharia actually can be flexibility practiced as long as it is directed to achieve its purpose.

The acceptance of Muslims to the secular state with Pancasila as its ideology, in which the word sharia is not mentioned, not a one-off process, it requires a long process as described by Faisal Ismail (Ismail, 1995). Concerning the diversity of Muslims in practicing sharia, H.A.R.Gibb as quoted by Hamid Enayat said that in the Sunni community there is no one universally accepted doctrine of caliphate. What is does lay down is a principle: that caliphate is that form of government which safeguards the ordinances of sharia and sees that they are put into practice. So long as that principle is applied, there may be infinite diversity in the manner of its application. (Enayat, 1982). Theocratic caliphate cannot be accepted in a country that has

embraced the principle of democracy like Indonesia. (Nurrohman, 2007)

Therefore, it is true when Hallaq said that the idea of the Islamic State in the form of a theocratic caliphate in a modern democratic country is an impossible. (Hallaq, 2013). Because it will hinder the emergence of what is called "pragmatic eclecticism" in Islamic law. (Ibrahim, 2015:10).

Viewed from general legal system in the world, what is going on in legal policy in Indonesia is what is described by Palmer, Mattar and Koppel as a mixed legal system, a legal system that combines civil law, common law, customary law and Islamic law. Under these conditions, all legal systems have an opportunity to contribute. (Palmer, Mattar and Koppel, 2015:279). So, the problem for practicing sharia in Indonesia actually only belong to parties who will imposed sharia formally, literally, and structurally through the instrument of the authoritarian state.

In Indonesia, a number of experts have different views in explaining the theory of how the sharia is applied in the context of the national legal system. Juhaya S Praja for instance, mentioned various theories such as credo theory, the theory of legal authority and the theory of *reception in complex*. According to these theories a Muslim is obliged to implement all Islamic law as a consequence of his creed. Islamic law is fully applicable to Muslims, because they have embraced Islam even though in practice there are still deviations. This theory became a reference in the colonial policy since 1855. (Praja, 2009: 107),

Christian Snouck Hurgronye (1857-1936) developed a theory called *receptive* theory. According to Hurgronye, Islamic law in Indonesia only applies if customary law requires it. This theory became the reference of colonial policy since 1929 through the Indische Staatsregeling of 1929 Article 134 paragraph 2.

A Qadri Azizy developed the theory which he called the theory of the positivization of Islamic law. According to this theory, the application of Islamic law is no longer determined on the basis of acceptance by customary law. Because Islamic law has basically become a positive law for Indonesian Muslims. The main reference of this theory is: UU No.1 th 1974 about marriage, PP No.28 of 1977 on Endowment (*Perwakafan)*, Law Number 7 of 1989 on Religious Courts, Presidential Decree No.1 of 1991 on Islamic Law Compilation, Law No.17 of 1999 on Zakat Management.

4 CONCLUSIONS

From this study it can be concluded that Indonesia remains a secular state. Although philosophically, Islamic law occupies an important position in Indonesia legal system but formally in the constitution, the word sharia or Islamic law was not mentioned. However, Muslims have a great opportunity to practice Islamic law fully as long as they use many alternatives. There are many models for practicing sharia in Indonesia.

As a source of ethics, morals and spirituality, the sharia for Muslims is a paradigm. When viewed from philosophical perspective what happens in Indonesia is the sharia-ization of Pancasila or Islamization of law, but when viewed from formal legal perspective, what happens is Pancasila-ization of sharia. For all laws and regulations promulgated in Indonesia must be openly prepared to be tested in conformity with the constitution.

This study impacted that Muslims in Indonesia didn't need a theocratic state of caliphate. This study also impacted that Indonesian Muslim didn't need Islamic Ideology to replace Pancasila as state ideology. Because, by following the provisions and principles contained in the constitution of Indonesia, Muslims in Indonesia has actually followed the Prophet Muhammad model in state affairs. Further research is directed to identify how the values contained in Pancasila and sharia are practiced by the Indonesian people, including by Muslims, in everyday life.

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APPENDIX

Table 1: The types of state according to Ahmed Kuru.

	Religious state	Secular State	Anti Religious state
Legislature and judiciary	Religious based	Secular	Secular
The state toward religion	Officially favour one	Officially favour one or none	Officially hostile to all or many
Examples	Iran, Saudi Arabia, Vatican	Greece, Denmark, England (officially favor one) United State, France ,Turkey (officially favor none)	North Korea, China, Cuba
Number of the state	12	60 (Officially favour one) 120 (Officially favour none)	5

Table 2: The role of religion in politics according to Masykuri Abdillah.

Types	**Description**
Religion as Political Ideology	Countries that place religion as ideology tend to practice religious teachings formally as positive law and take a structural approach to socialization and institutionalization of religious teachings.
Religion as ethical, moral and spiritual base	Countries that place religion as an ethical, moral, and spiritual source tend to support cultural approaches and reject structural approaches in terms of socialization and institutionalization of religious teachings.
Religion as sub-ideology	Countries that place religion as sub-ideology tend to support a cultural as well as structural approach by involving religious teachings in public policy making in a constitutional, democratic

	and non-discriminatory manner.

Table 3: The models for practicing Sharia.

	Description	Assumptions
Exclusive textual	trying to implement sharia as mentioned in the text of the Qur'an, the prophet tradition or in the text of standard works of expert recognized by its authority in explaining Islamic law	Sharia has perfectly regulated all aspects of life. Sharia after the prophet Muhammad no longer experiences the process of evolution
Inclusive substantial	Trying to practice sharia by looking at the concepts or ideas that exist behind the text. If the main idea has been captured, then its application can be carried out flexibly.	Every legal provision in Islamic law has its reasoning and purpose. Therefore, Islamic law undergoes evolution. There is no monopoly in the interpretation of sharia.
Combination	In practicing the sharia, they divided it into purely religion (*ta'abbudi*) and *ta'aqquli* (be understood by reason). They sort the sharia into two, private and public.	Some sharia has a reason and experiences evolution, and the other ones are should accepted without reason and not experience evolution

Table 4: The comparison between Indonesia constitution and medina charter according to Harun Nasution.

The elements of	**Medina Charter**	**Indonesia Constitution**
(1)Monotheism	Article 22,23,42,47	The first principle of Pancasila, and article 9, 29
(2) Unity and togetherness	Article 1,15,17,25,37	The third principle of Pancasila, article 1 verse 1, article 35, and 36
(3)Equality and justice	Article 13,15,16,22,23, 24,37,40	The fifth principle of Pancasila, article 27,31,33,34
(4)Religious freedom	Article 25	Article 29
(5) Defending state	Article 24,37,38,44	Article 30
(6) Preserving good tradition	Article 2,3,4,5,6,7,8,9,10	Article 32
(7) Supremacy of sharia	Article 23,42	The first principle of Pancasila, and article 29
(8) Politics of peace and protection	Article 15,17,36,37,40, 41,45,47	Preamble of constitution and article 11,13

Table 5: The place of Sharia in the constitution of Muslim countries according to Nurrohman.

The grade	**The position of sharia**	**Example of the state**
1	A country whose constitution recognizes Islam as a state religion and makes sharia the main source of legislation	Saudi Arabia, Libya, Iran, Pakistan and Egypt
2	A country whose constitution declares Islam as a state religion but does not mention sharia as the main source of legislation means that sharia is only seen as one source of some legal sources of legislation	Iraq and Malaysia.
3	A country that does not make Islam a state religion and does not make sharia the main source of legislation but recognizes the sharia as a living law in the community.	Indonesia
4	States that declare themselves as a secular state and seek to make the Islamic sharia not affect its legal system.	Turkey