REPRODUCTION OF ISLAMIC LAW IN THE ERA OF GLOBALIZATION AND PLURALISM

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Abstract

The rise of globalization values: secularism, capitalism, legal liberalization and democratic freedom that is sweeping the world today can create a disharmony of diversity during legal pluralism that exists in Indonesia between state law, religious law and customary law. The context of reproduction in this study redesigns policies based on Islamic law that have a vision that can moderate diversity in Indonesia so that the existence of Islamic law can be accepted in the context of diversity and diversity in an inclusive manner. To conduct the research, the author uses conceptual approaches and statutory law. As a result, the author concluded that legal pluralism in Indonesia should not occur strong autonomy in each legal system but increasingly interact and interconnect in the context of moderation, this complementary reproduction model of pluralism is being designed in this study.

Keywords: Globalization; Islamic law; National Legal Systems.

Introduction

The current of globalization that has hit countries in the world has brought such a complex influence in human life, religion, law and social society. The influence caused in addition to containing positive values also contains negative values. The positive values caused include the development of science and technology while the negative values that are born include a shift in people's values and behavior due to the entry of new values and behaviors from outside.

The occurrence of globalization will result in rapid cultural and moral acculturation. Distortion of morality will occur. Old values will be displaced by new values, allowing *clash of values* to occur. The clash will result in, among others: the drifting of Muslims in the rapid flow of globalization. What follows is secularization. They adopt new values in a *take of granted* manner without questioning the content of moral values they contain.[1]

These positive and negative impacts have a significant influence on the legal system of each country globally as well as affect the implementation of religion, including Islamic law itself. People feel anxiety and fear due to the negative effects of globalization. Global culture has changed the culture of the host society as well as concerns the good side of economic and social development around the world and the negative impact of cultural globalization on religion (Kasongo, 2010).[2] Even the globalization of economics, politics, and human affairs has made individuals and groups more ontological insecure and existentially uncertain. One of the main responses to insecurity is to seek reaffirmation of one's identity by getting closer to collectives that are considered capable of reducing existential insecurity and anxiety (Kinnvall 2006).

Ontological insecurity and existential value uncertainty also occur in the implementation of Islamic legal politics or *legal policies* taken by the state. In Indonesia, for example, the application of Islamic law, both normatively and positively, is also determined by the development

[1] Nur Kholis, *prospects for the application of Islamic Law in Indonesia,* journal of Islamic Law Al-Mawardi, Edition 8, p.134., see also Agus Triyanta, "prospects of Islamic Law in Indonesia, in Journal of Ius Hukum, No.8 Vol.4, 1997,.

[2] Alphonse Kasongo, "Impact of Globalization on Traditional African Religion and Cultural Conflict," *Journal of Alternative Perspectives in the Social Sciences* 2, no. 1 (2010).

and demands of existing globalization currents. In the end, the demand of globalization flows ultimately contribute to the configuration of government in law, as Supriono said that globalization changes complex legal configurations, when global linkages increase, cross-border transactions and communication are increasingly widespread, so there is a need to create transnational ruls. Globalization has also led to an increasing expansion of international legal regimes around public and civil law.[3]

As a result, globalization by itself creates a *new order* or new order in a country's national legal system. As Eddy Pratomo argues that gelobaliasi is a social order (order) that affects the economic, political, and legal life of a country in various parts of the world due to the rapid development of communication, transportation, information technology to facilitate the interaction of international relations carried out by countries and international organizations.[4]

According to Samuel M. Makinda, Globalization describes multilayered and multidimensional processes and phenomena of life, largely driven by Western countries and specifically capitalists and their values of life and implementation.[5] The process of globalization led to the gradual dissemination of values and ideas related to civil, social, and cultural rights and the *right to development* for developing countries on the other hand.

The extent to which the influence of globalization affects the national legal system will be determined by the current legal pattern and character through legal political policies in legal products in Indonesia. According to Dharma Setiawan Pagaralam that the current factual condition of Indonesian law is very concerning, considering the many laws and regulations that are separated from the Indonesian context, tend to contain liberalist and capitalist values that enter through globalization, so that if left unchecked it will eliminate the

[3] Supriyono, "Pengaruh Globalisasi Terhadap Pembangunan Hukum Dan Tantangannya Di Era Revolusi Industri 4.0," *Fakultas Hukum Universitas Cokroaminoto Yogjakarta* (2018).

[4] Eddy Pratomo, Journal of Business Law, Vol. 23 No. 1, Year 2004, p. 35.

[5] Samuel M. Makinda, Current Affair, Vol. 74 No. 6 April-Mei 1988, hlm. 4

characteristics, systems and values of Indonesian life that adhere to an integralistic understanding known as Pancasila values.[6]

For example, international pressure surrounding the discussion of the Criminal Code Bill which has now become Law Number 12 of 2023 concerning the Criminal Code (new KUHP) around the expansion of decency articles such as article 292 concerning same sex/homosexual obscenity, article 284 concerning adultery and article 285 concerning rape. In the new Criminal Code, articles 411-413 affirm that everyone who lives together as husband and wife outside marriage is sentenced to imprisonment for a maximum of 6 (six) months, as well as adultery or intercourse with people who are not husband or wife is also punished with a maximum of one year and a fine of 10 million.

In mass media records such as republika.id which raised the title "The Criminal Code Law Triggers Foreign Reactions, that the Criminal Code Law (KUHP) is even a week-old today. However, polemics continue to occur, the latest rejection comes from foreign parties ranging from neighboring countries to international institutions. This shows that the homework of socializing the new Criminal Code Law still must be done by the government and the DPR. Australia was the first to take a stance on the Criminal Code Act. The country, nicknamed the Land of Kangaroos, raised travel advice for its citizens to Indonesia to be 'careful', the Australian government is worried that the implementation of the Criminal Code Law, especially about articles that regulate the prohibition of sex outside marriage for foreigners or residents has an impact on its citizens vacationing in Bali. U.S. Ambassador to Indonesia Sung Y Kim also did not hesitate to show his disagreement with the Criminal Code Sung said that the regulation with the potential for foreign investment in Indonesia "may result in a decrease".[7]

Attempts to influence secularism on Islamic law and laws and regulations in Indonesia also occur in interfaith marriage law. Although Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage has affirmed that "marriage is valid if it is carried out according to the law of each religion and belief" and affirmed in Constitutional Court

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[6] Dharma Setiawan Pagaralam, "Implikasi Globalisasi Dan Penegakan Hukum Progresif Di Indonesia," *Pranata Hukum* 4, no. 1 (2011).

[7] www.republika.id. The Criminal Code Law Triggers Foreign Reactions on December 13, 2022, accessed Sunday, January 15, 2023 at 23.00 WITA.

Decision Number 68/PUU-XII/2014 and Decision Number 24/PUU-XX/2022 which basically states that the constitutionality of a valid marriage is carried out according to religion and belief and refuses to provide a constitutionality basis for interfaith marriage and belief.

However, since the inception of Law No. 23 of 2006 concerning Population Administration has created an open blemish because Article 35 letter a states "marriage registration as referred to in Article 34 also applies to: a. Marriage determined by the court" and the explanation of Article 35 letter a of the Population Administration Law confirms that what is meant by marriage determined by the Court is marriage carried out between people of different religions. so that creating legal disparities or contradictions *in terms* between the Marriage Law and the Population Administration Law which creates legal uncertainty. Although the Supreme Court has issued Circular Letter (SEMA) Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Applications for Registration of Marriages Between People of Different Religions and Beliefs, SEMA's position is still considered contrary to the Law on Government Administration and Human Rights.

Calls to revoke SEMA No. 2 of 2023 are still happening. Constitutional law expert Bivitri Susanti assessed that the Supreme Court circular No. 2 of 2023 is loaded with political interventions that are contrary to the Population Administration Law and violate human rights, because Article 16 paragraph 1 of the Universal Declaration of Human Rights states "Adult men and women with no restrictions on nationality, nationality or religion, have the right to marry and to form families, should the Supreme Court revoke or revise its circular. Ahmad Nurcholis, Director of the Indonesian Conference on Religion and Peace (ICRP) Program Director, also rejected that the issuance of SEMA was considered a setback for the Supreme Court even though the Supreme Court was previously classified as progressive compared to the Constitutional Court in terms of interfaith marriage, with the issuance of Supreme Court decision Number 1400 / K / Pdt / 1986, the decision declared interfaith marriage legal in Indonesia by way of

court determination which then became jurisprudence for judges in deciding cases similar.[8]

Therefore, Indonesia needs a compromise point between religious law and state law or a modern legal system that is able to adapt to changes due to globalization currents but does not come out of religious legal values or the concept of integration of religious legal systems in the national legal system is needed.[9] The need for conceptual efforts in protecting the existence of religion, especially the rules of Islamic law in laws and regulations so that Islamic law can adapt again in facing the entry of the demands of the growing era of globalization.

Based on the background above, the formulation of the problem of this article is how the influence and relationship of globalization, legal pluralism and Islamic law in the Indonesian context, and how the reproduction model of Islamic law in the Indonesian statutory system and constitutional law system in the midst of globalization and legal pluralism that is happening The purpose of this study is to analyze conceptual strategies that can be done in reproducing or reformulate the existence of Islamic law, the Indonesian legal system, and the constitutional system in Indonesia.

With this study, it is expected to enrich the conception of the study of state and Islamic relations, especially Islamic law and national legislation techniques, and in the current context in the era of globalization and legal pluralism, an ideal formulation of statehood is found in regulating the pattern of relations and integrative policy political formulations between Islamic law and the state in Indonesia. In addition, this study is expected to be a rare anticipation in maintaining the existence of Islamic law and religious life of Muslims in Indonesia amid ideological disturbances and other products of globalization that are not in line with Islamic values and principles.

This article is qualitative research. Data is extracted through literature review using conceptual and legal approaches. This study is directed to find strategies or techniques for norming Islamic legal rules

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[8] https://www.bbc.com/indonesia/articles/c19l4lwkxl4o. Retrieved Thursday, March 21, 2024 at 09.58 WITA

[9] Nasarudin Umar, "Konsep Hukum Modern: Suatu Perspektif Keindonesiaan, Integrasi Sistem Hukum Agama Dan Sistem Hukum Nasional," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 22, no. 1 (2014).

Jurnal Hukum dan Peradilan Vol. 12, no. 3 (2023), pp. 629-654
ISSN: 2303-3274 (p), 2528-1100 (e)
DOI: https://doi.org/10.25216/jhp.12.3.2023.629-654

in the Indonesian legal system, the data that has been collected will then be analyzed descriptively.

Discussion

a. Globalization and the Existence of Islamic Law

The study of globalization has been widely discussed scientifically including its effects. Globalization as a process has accelerated since the last few decades. But the real process goes back a long way. Solely because of the predisposition for human beings to live together in a region and that arena, conditioned to relate and acknowledge relationships with each other.[10]

Global influence, especially major countries in influencing the development of law in a country, is very felt and this cannot be contained, using the economic power of a country such as the United States can easily affect the development of a nation's national legal system. For example, through the ELLIPSE project. In this connection Lois Henkin said that a superpower with its position can resort to coercion and deception in the bargaining process.[11]

That the presence of globalization has brought new values in society and law is one area that cannot be separated from the impact caused. In the era of globalization, in carrying out national legal development, a responsive legal order is needed, and Pancasila must be used as a paradigm as a legal ideal. Pancasila as the ideal of law is a filter and at the same time harmonizes between global values and pluralistic values of local wisdom as values that are confirmed and believed in the life and ideology of the nation.[12]

Dharma Setiawan Pagaralam argues that the spread of values and thoughts under the process of globalization is included in the form

[10] Satjipto Rahardjo, "Pembangunan Hukum Di Indonesia Dalam Konteks Global," *Perspektif* 2, no. 2 (1997).

[11] Lois Henkin, dalam J Panglaykin, *Tata Ekonomi Internasional Baru Menuju Dialog Utara Selatan dan Organisasi Kekuasaan Yang efektif,* Analisas, CSIS 1982, hlm 527. Lihat juga, Edi Setiadi, *Pengaruh Globalisasi Terhadap Subtansi dan Penegakan Hukum,* Jurnal Mimbar, Vol.XVIII No.4, Oktober-Desember 2002, hlm. 445

[12] Sunaryo, "Globalisasi Dan Pluralisme Hukum Dalam Pembangunan Sistem Hukum Pancasila," *Masalah-Masalah Hukum* 42, no. 4 (2013).

of policies and legal rules set by the state that contain many liberal values so that it can be said that globalization is based on liberalism.[13]

Liberalism and capitalism driven by superpowers and transnational corporations polish the world into a global stage of life, they reconstruct needs, dictate tastes and lifestyles and design global culture (tends to be uniform) which is blindly imitated by cultural consumers (third world countries) or developing countries through communication media, television and the internet resulting in the worship of material where the criteria of life based on material measures, property and power and ignoring moral values, spiritual wealth, modesty, love and loyalty (in accordance with religious and cultural teachings). So that the flow of globalization opens 3 (three) things, namely human rights, democratic freedom or openness and the environment.[14]

Various studies of the influence and relationship of globalization with the State are categorized into 2 groups. *First* , there is the view that globalization has a significant effect on countries, this opinion is supported by Urlich Beck, Anthony Gidden, Konichi Ohmae, that globalization has an effect on relations between states and nations in the world that will be deterritorialized and will be under influence quickly and if the state is not ready it will be left behind and will even bring the destruction of nation states.[15]

Second, that globalization not only affects countries but also affects various fields such as the economic field, also the social, cultural, technological and trade fields[16] including the implications of globalization on law[17] . This view was pioneered by Barbara Parker, Muladi. Third, that globalization affects the values of this view was put

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[13] Dharma Setiawan Pagaralam, "Implikasi Globalisasi Dan Penegakan Hukum Progresif Di Indonesia."

[14] Nono Sampono, disampaikan dalam materi kuliah tamu "Nilai-Nilai Kebangsaan" di IAIN Ambon tanggal 5 Januari 2023.

[15] Kaelan, Pancasila Sebagai Falsafah Bangsa dan Negara Indonesia, (Yogyakarta: UGM, 2006), hlm.1

[16] Barabara Parker, *Evolution and From International Business to Globalization in Hand Book Of Organization Studies,* (London: 1977) hlm. 484

[17] Muladi, Paper: Legal Reform in the Framework of National Legal System Development, Presented at the Third Graduation of the Postgraduate Master of Administration Program of the Mandala Indonesia College of Administrative Sciences Jakarta, p.9

forward by Lucian W. Pye that globalization as a symptom of the spread of certain values and cultures throughout the world (thus becoming world culture or world cultur).[18]

Of the two categorizations of the influence of globalization relations with existing countries, there is no view that sees the significance of the influence of globalization on the existence of the sustainability of Islamic law in Indonesia in the last 1 (one) decade, both in terms of juridical and normative laws and regulations in community habits. With the second categorization where globalization has an influence not only on the state but also affects various fields including law to create the influence of globalization and its relationship with the state which ultimately gives birth to diversity or legal pluralism in the midst of society is still especially in modern countries including Indonesia.

Based on a review of the literature, a number of experts were found who provide an understanding of legal pluralism such as Sally Engle Merry, Paul Schiff Berman, Lawrence M. Friedman, Griffiths. According to Sally Engle Merry stated the definition of legal pluralism is: Generally defined as a situation in which two or more legal systems coexist in the same social field.[19]

That legal pluralism is the enactment of two legal systems that coexist and develop in social life. Paul Schiff Berman argues for legal pluralism: " *Those situations in which two or more state and non-state normative systems occupy the same social field and must negotiate the resulting hybrid legal space*".[20] Based on this understanding, it can be interpreted in general that pluralism as a state in which two or more legal norms apply in social life and can be negotiated to produce two types of legal systems in a region.

Based on the two understandings above, Lawrence M. Friedman has in common what Lawrence M. Friedman said that legal

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[18] Soediro, "Hubungan Hukum Dan Globalisasi: Upaya Mengantisipasi Dampak Negatifnya," *Jurnal Kosmik Hukum* 17, no. 1 (2017).

[19] Janet Koven Levit, "BOTTOM-UP LAWMAKING THROUGH A PLURALIST LENS: THE ICC BANKING COMMISSION AND THE TRANSNATIONAL REGULATION OF LETTERS OF CREDIT," *Emory Law Journal* 57, no. 5 (2008).

[20] Paul Schiff Berman, "Federalism and International Law through the Lens of Legal Pluralism ," *Missouri Law Review* 73, no. 4 (2008).

pluralism means the existence of different legal systems or cultures in a single political community.[21] Griffiths argues that legal pluralism is a condition that occurs in any social area, where all community actions in that area are governed by more than one legal order.[22]

Werner Menski in his work entitled *Comparative Law in a Global: Context, The Legal System of Asia and Africa (2006)* asserts that law as a global phenomenon has similarities throughout the world. In the sense that everywhere law consists of ethical/religious/moral values, social norms and rules made by the state. These three elements are plural, so that the laws of state products that gain influence because of negotiations with ethical, moral and religious norms or certain social and cultural norms.[23]

From the explanation above, it can be understood that legal pluralism will occur if in a society two or more legal systems apply. This is an inevitable reality in a country. If it is related to the applicable legal system of Indonesia, especially in the field of civil law. According to Salim HS, this is still plural because of the various civil laws that apply in society, consisting of religious law, customary law and state law.[24]

Legal pluralism is also known in agrarian law both before and the enactment of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, the land law system in force in Indonesia is still pluralist, namely customary and western land law systems. Articles 3 and 5 give recognition to customary rights and the use of customary law. Article 5 reads: "Agrarian law applicable to earth, water and space is customary law, as long as it does not conflict with national and state interests based on the unity of the nation with Indonesian socialism and with other laws and regulations, all with due regard to elements that rely on religious law." According to Salim HS, by using Griffiths' frame of mind, the legal pluralism adopted in the UUPA is legal pluralism

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[21] Lawrence M. Friedman, Legal Systems A Social Science Perspective. Translated by M.Khozim (Bandung:Nusa Media, 2009), p. 257.

[22] Jhon Griffiths, "Understanding Legal Pluralism, A Conceptual Description", in Legal Pluralism An Interdisciplinary Approach, translator Andri Akbar et al. (Jakarta: Hama, 2005), pp.69-71.

[23] Achmad Ali, "Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence) Termasuk Undang-Undang (Legisprudence)," in *Volume I Pemahaman Awal*, 2017.

[24] Haji Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*, 1st ed. (Jakarta: Rajawali Pers, 2016).

because the UUPA itself still applies customary and religious law provisions in the land sector.[25]

Based on the above study, Indonesian law applies legal pluralism in its legal system, allowing the Islamic legal system to develop in tandem with the customary law system and the state legal system. When it comes to implementing Islamic law during globalization in Muslim-majority countries, there is a desire to re-mediate Islamic law as Poulter argues:

> *The shari'a law comprises not only laws enforceable by political authority, bu also morals, manners and obligation binding on the individual conscience alone, ….. Islamic law becomes then the law of islmaic states and obligations which were at one time a matters of individual conscience or matters between God and Men, reinforced by the opinion of the others within cohesive communities, are transformed into impersonal rules enforceable by state authority.*[26]

That there is a view that at this time, Islam and Muslims have been seen as religions or people who retreat continue to be oppressed and denied their rights such as in Palestine, the Balkans, Afghanistan they cannot enjoy and feel the meaning of Islamic values, as well as in Islamic majority countries that strive to strengthen the development of Islam and Islamic law in realizing the Islamic ideals of state life, However, it is also realized that there are concerns that the current of globalization also contains neocolonialism whose main goal is only to perpetuate the hegemony of great powers.[27] As Carol Quigley said, Islamic civilization needs instruments for development to re-establish it.[28]

In the context of constitutional law, it requires the right formulation and concept of how to apply Islamic law during legal pluralism in Indonesia contextually. So the most important position of the state to provide the necessary instruments and cannot be separated

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[25] Ibid hlm. 101.

[26] Sebastian Poulter, "Ethnic Minority Customs, English Law and Human Rights," *International and Comparative Law Quarterly* 36, no. 3 (1987).

[27] Abdul Monir Yaacob, dkk. *Legal Development in the ASEAN Region,* Malaysia: Institute of Islamic Understanding Malaysia (IKIM), 2002, Kuala Lumpur Malaysia, p. ii

[28] Abdul Monir Yaacob, dkk. *Legal Development in the ASEAN Region,* Malaysia: Institute of Islamic Understanding Malaysia (IKIM), 2002, Kuala Lumpur Malaysia, hlm.iii

from the need for good governance instruments in the existing judicial, executive and legislative branches of power, in the judicial or judicial dimension Islamic law requires judicial instruments to enforce the enforcement of Islamic law, in the legislative dimension regulatory policies are needed that regulate Islamic law itself.

b. The Concept of Reproduction of Islamic Law in the Indonesian Context

The development of national law will apply to all citizens regardless of the religion they embrace must be done carefully, because among the religions embraced by citizens of the Republic of Indonesia there are religions that cannot be separated from religious law. Islam, for example, is a religion that contains laws that regulate human relations with humans and objects in society, therefore in the development of national law in a Muslim-majority country like in Indonesia, the elements of religious law are really considered for that it needs clear insight and wise policies, because national law must be able to protect and overshadow the entire nation and state in all aspects of their lives.[29]

Islamic law in the Indonesian context has been understood to have a very strong interrelation and causality relationship. The NRI Constitution of 1945 contains articles that are very open to the inclusion of legal norms to meet the needs of the Indonesian people therefore also open religious values in our national legal and positive legal system as well as religious values will be the driving force for the birth of a national positive legal system in the future.[30]

Islamic law is one of the sources of national law that has been widely adopted into positive law in Indonesia. As Ismail Sunnny argues that Islamic law applies to Indonesians who are Muslims in accordance with Article 29 of the 1945 Constitution as a period of acceptance of Islamic law and *persuasive sources.*[31] Such as Law No. 1 of 1974 concerning

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[29] Mardani Mardani, "KEDUDUKAN HUKUM ISLAM DALAM SISTEM HUKUM NASIONAL," *JURNAL HUKUM IUS QUIA IUSTUM* 16, no. 2 (2009).

[30] H. Hartono Mardjono, *Menegakkan Syariat Islam Dalam Konteks Keindonesiaan : Proses Penerapan Nilai-Nilai Islam Dalam Aspek Hukum, Politik, Dan Lembaga Negara*, vol. 1 (Bandung: Mizan, 1997).

[31] Ismail Sunny, "Islamic Tradition and Innovation in Indonesia in the Field of Islamic Law", in, Islamic Law in Indonesian Society, Cik Hasan Basri (ed), (Jakarta: Logos Publishing, 1988, p.96.

Marriage. The commitment of the government and parliament in positively promoting religious institutions, especially Islamic law, in several momentums can be seen but often faces obstacles.

The positivization of Islamic law in the law is realized to be not an easy thing without challenges, often through difficult obstacles, especially from groups that often claim to be nationalists and liberalists. Even in the discussion in the DPR appeared Islamic Phobia groups including from nationalist factions.

Such conditions and political phenomena of *law-making policy* in the context of building an integralistic national legal system will create legal uncertainty for the future of Islamic law in Indonesia, so academically the idea of the concept of reproduction of Islamic law is needed in redesigning national legal political products that are more friendly and open to Islamic law, or at least a fair compromise point is found.

The concept of reproduction of Islamic law in the Indonesian legal dimension cannot be separated from the position of Pancasila as the source of all sources of state law as affirmed in the provisions of Article 2 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (PPP Law) which reads: "Pancasila is the source of all sources of state law" where in the First Precept of Pancasila summarized religious values including The elaboration of religious values into the religious law itself. In the explanation of Article 2 of the PPP Law, it is explicitly negated that the material content of legislation must not conflict with the values of Pancasila.[32]

Therefore, in facing the era of globalization, the reproduction of Islamic law is to revive the values of Pancasila which contains religious values in strengthening national law. The network of values in Pancasila is expected to strengthen the national legal system to always survive in the face of modernization that occurs in society due to the current era of globalization.[33]

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[32] Penjelasan Pasal 2 UU PPP berbunyi: menempatkan Pancasila sebagai dasar Negara dan ideologi Negara serta sekaligus dasar filosofi Negara sehingga setiap materi muatan Peraturan Perundang-Undangan tidak bertentanan dengan nilai-nilai yang terkandung dalam Pancasila.

Based on the study of legislation conducted by the author, data on a number of laws obtained a shift in government attitudes in responding to the phenomenon of social change due to globalization trends and the development of community diversity in maintaining Islamic law in Indonesia, one of the data analyzed included regulating interfaith marriage problems.

Before Indonesia became independent and had its own legal system, the Dutch implemented interfaith marriage laws through *Regeling op Gemengde Huwelijken (GHR) Koninklijk Besluit van* 29 December 1896 No. 23, staatblad 1896 No. 158 which is a Mixed Marriage Regulation (PPC) issued specifically by the Dutch Colonial Government there are several provisions for mixed marriage, one of which is in Article 7 paragraph (2) which stipulates that: "Differences in religion, class, population, or origin cannot be an obstacle to the continuation of marriage"[34]

With the issuance of the Marriage Law, the meaning of mixed marriage has been reproduced with a different meaning where mixed marriage is no longer in the context of religious differences but mixed marriage due to state differences, this is regulated in Article 57 of the Marriage Law which reads:

> *What is meant by mixed marriage in this law is a marriage between two people who in Indonesia are subject to different laws due to differences in nationality and one of the parties is an Indonesian citizen.*

In addition, the Marriage Law normatively provides an affirmation in Article 2 which reads "marriage is valid, if it is carried out according to the laws of each religion and belief. This article expressly states that marriage is valid if it is carried out according to religious law, so for those who are Muslim for their marriage to be valid must be carried out based on the provisions of Islamic marriage law or it can be said that the determination of whether marriage is permissible depends on the provisions of religious law.

This is in line with the rules of Islamic law such as the words of Allah Almighty in Q.S Al Baqarah verse 221: "*And do not marry polytheistic women before they have believed*" and Q.S Al-Mumprisoner verse 10: ... *And do not hold on to the rope (marriage) with unbelieving women*." Both verses clearly provide provisions prohibiting marriage or interfaith marriage.

[34] Mahkamah Agung RI

Furthermore, if it is related to the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law. (KHI) The regulation of interfaith marriage is even firmer, this can be seen in the provisions of Article 4 of the KHI which reads: Marriage is valid, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage. Furthermore, article 40 letter c reads: It is forbidden to enter a marriage between a man and a woman due to certain circumstances:

a. Because the woman concerned is still bound by one marriage with another man;
b. A woman who is still in the period of *iddah* with another man;
c. A woman who is not Muslim.

The provisions of Article 40 letter c of the IHL are also closely related to Article 18 of the IHL which reads: For prospective husbands and prospective wives who will marry a man there are no obstacles to marriage as stipulated in chapter VI. Furthermore, article 44 of the IHL reads: A Muslim woman is prohibited from marrying a man who is not Muslim. Furthermore, it is reaffirmed in Article 116 letter h KHI which reads divorce can occur for reasons including letter h. reads: "conversion or apostasy that causes disharmony in the household".

The lagging behind of the Marriage Law in regulating interfaith marriage compared to the Compilation of Islamic Law, academically it is necessary to refine the Marriage Law, especially in article 8 of the Marriage Law which regulates the prohibition of marriage because it only explicitly regulates the prohibition of interfaith marriage while Article 8 of the Marriage Law reads: "Marriage is prohibited between two persons who have a relationship that by their religion or other applicable regulations, No marriage". *Ratio-legis* this article clearly requires that marriage is prohibited if two people whose religious law is prohibited from marrying, however, the more general interpretation has not affirmed the prohibition for Muslims who marry couples of different religions, because the problem is if the couple to be married has different religious laws for example one partner in his religious law allows interfaith marriage while the couple whose Islam prohibits, In the end, Article 8 does not apply or loses binding force

So in the context of the development of Islamic law, it is necessary to reproduce the marriage law by reformulating the Marriage Law by negating the phrase prohibition of interfaith marriage in the revision of the Marriage Law, in addition, the KHI Presidential Instruction needs to be raised to a Government Regulation so that its legal position is higher and more binding than the Presidential Instruction because Government Regulations are included in the hierarchy of laws and regulations based on Law No. 12 Year 2011 concerning the Establishment of Laws and Regulations.

Another reason that underlies the importance of the reproduction of Islamic law in the field of marriage law in Indonesia is that in the absence of an explicit legal umbrella regulating the issue of interfaith marriage so that in practice the vagueness or indecision of the prohibition of interfaith marriage in the Marriage Law, causes the practice of interfaith marriage to occur in society. Based on data compiled by the *Indonesia Conference On Religion and Peace (ICRP)* from 2005 to early March 2022, there have been 1,425 interfaith couples married in Indonesia.[35]

One of the causes is Law Number 23 of 2006 concerning Population Administration (hereinafter: Population Administration Law) opening up space for legalizing interfaith marriages. Based on a review of a number of court decisions in Indonesia that legalize interfaith marriage, the judge in his consideration made the Population Administration Law the basis for considering his decision. This creates a conflict of norms between the Marriage Law and the Population Administration Law.

Because Article 35 letter a of the AK Law has opened the opportunity for the determination of interfaith marriage by judges in public courts because in accordance with Article 35 letter a of the AK Law reads:

Article 21 paragraph (3) of the Population Administration Law reads:

> *The parties whose marriage is rejected shall have the right to apply to the court in which the clerk of the marriage registrar who instituted the refusal*

[35] https://news.detik.com/berita/d-5931229/digugat-lagi-ini-alasan-mk-tolak-legalkan -pernikahan-beda-agama-di-2015, diakses pada 12 Januari 2022 pukul19.35.

is domiciled to render a decision by submitting the certificate of refusal mentioned above.

Article 35 letter a of Law 23 of 2006 reads: Marriage registration as referred to in article 34 also applies to: a. marriage determined by the court". Furthermore, the explanation of Article 35 letter a reads: "what is meant by marriage determined by the Court is marriage between people of different religions".

This provision clearly provides an option for subjects of interfaith marriage law to apply for interfaith marriage in the District Court, so that the District Court issues an order permitting interfaith marriage as well as opening the possibility for a court decision to order the Civil Registry Office to register interfaith marriages in the Marriage Registration Register. So it is clear that the existence of article 35 letter a of the Population Administration Law provides room for judges to grant requests for interfaith marriage, moreover the provisions of Article 36 of the Population Administration Law read: In the event that the marriage cannot be proven by a Marriage Certificate, marriage registration is carried out after a court determination, has opened the door for interfaith marriages that have been carried out can obtain approval and registration from the district court.

Although in its development, the Supreme Court has issued Circular Letter (SEMA) Number 2 of 2023 concerning Guidelines for Judges in Adjudicating Applications for Registration of Marriages Between People of Different Religions and Beliefs, the Supreme Court has substantively prohibited judges at all levels of the court from granting applications for registration of interfaith marriages. However, Article 35 letter a of the Population Administration Law is still active and there is no provision prohibiting interfaith marriage in the Marriage Law. Not to mention that SEMA's position in the legislative hierarchy has a weak position and the law is based on the provisions of Article 7 and Article 8 of Law No. 12 of 2011 concerning Laws and Regulations.

Against this phenomenon, there will be a disparity in judges' decisions in determining applications for interfaith marriage and cause the Marriage Law to be ineffective in enforcing its norms, especially in maintaining the legal requirements for marriage which must be in accordance with their respective religious laws as stipulated in article 2 of the Marriage Law. This situation also creates legal uncertainty for the

enforceability of Islamic law in society and can be a threat to the existence of Islamic law in Indonesia. So that efforts to reproduce Islamic marriage law in the Marriage Law in Indonesia become very relevant to the enactment of the Marriage Law.

With the Constitutional Court Decision Number 68 / PUU-XI / 2014 which basically rejected the application for judicial review of Article 2 of the Marriage Law and reaffirmed the prohibition of interfaith marriage because the act is a legalization of adultery is [36] sufficient reason for the need to affirm the norm of prohibition of interfaith marriage in the Marriage Law and revise Articles 34 to Article 36 of the Population Administration Law so as not to give authority to the District Court to adjudicating applications for legalization of interfaith marriages because they are contrary to Islamic law and the principle of statehood, namely Indonesia as a Unitary State based on the Almighty Godhead as stipulated in Article 29 paragraph 1 of the NRI Constitution of 1945

And if it is related to the norms stipulated in the 1945 Constitution article 28 B paragraph (1) which reads: everyone has the right to form a family and continue offspring through legal marriage. This phrase of valid marriage is in line with what is stipulated in article 2 of the Marriage Law that marriage is valid if it is carried out according to religious law. The concept of reproduction of Islamic law is also in line with the establishment of religious values as a consideration for making a law to limit the rights and freedoms of citizens as affirmed in Article 28J paragraph 2 of the NRI Constitution of 1945 which reads:

> *In exercising his or her rights and freedoms, everyone shall be subject to restrictions established by law with a view to ensuring recognition and respect for the right to liberty of others and to meet just demands in accordance with considerations of morals, religious values, security and public order in a democratic society.*

Therefore, the material content of article 28 J paragraph 2 above clearly becomes the constitutional basis of religious values as a source of law in the law to limit the rights and freedoms of everyone who is contrary to Islamic law such as interfaith marriage. This is where it is important to reproduce the institution of religious law in laws and regulations in order to respond to developments and various efforts to

reduce the value of religious law in marriage law, especially Islam in the interest of freedom on the basis of human rights to legalize interfaith marriage which is expressly prohibited in Islamic law and various religions in Indonesia.

c. Inclusive Reproduction of Islamic Law

The pattern of religion and state relations in Indonesia is a very strong relationship because it needs each other, the state needs religion as the basic foundation of national morals, while religion needs the state as a protector and protector of society. In the tradition of national legal development, the concept of religious and state relations has been well implemented in the national legal system. Where religious law is integrated in the law of the land.

Constitutionally, the implementation of the relationship between religion and the State is very thick in the Indonesian constitution, this can be seen in the legal construction in the constitution which is regulated in the content of Article 28J paragraph (2), Article 29 paragraph 1 and paragraph (2) of the NRI Constitution of 1945 which is basically the State based on the One and Only God, the state guarantees freedom of religion according to their respective religions and beliefs and religious values as one of the considerations in limiting the rights and freedoms of each person. This means that there is a balance to be achieved in the constitution that religious rights are mutlah rights that must be protected and guaranteed by the state therefore everyone's right to freedom is subject to restrictions set by law.

So in the context of reproducing Islamic law in laws and regulations, it is necessary to redesign policies based on Islamic law that have a vision that can moderate diversity in Indonesia so that the existence of Islamic law can be accepted in the context of diversity, diversity in an inclusive manner. This means that each religion has the opportunity to contribute to the development of the national legal system but is able to create inclusiveness that can be accepted in the context of diversity. This means the existence of legal pluralism in Indonesia so that between one legal system there is no strong autonomy in each legal system or negates each other as the most correct and feasible system, but which is expected to be interconnected or

complement each other and actualize positive values and principles that are universal.

To realize an inclusive model of Islamic legal reproduction is built through (3) basic assumptions as a basis in actualizing Islamic law in the development of the national legal system, namely: *First* , Based on the values of Pancasila, that the concept of reproduction of Islamic law still departs and is based on a basic religious assumption (religiosity) based on pancasila, meaning that the formation of law includes the formation of Islamic law in laws and regulations; must depart from the values of Pancasila and Islamic law that will be built so that Pancasila with the values in it becomes a source in the formation of law and the application of law.

This is as stipulated in the provisions of Article 2 and Article 3 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations which reads: Pancasila is the source of all sources of state law and the Constitution of the Republic of Indonesia is the basic law in laws and regulations. The basic conception of Pancasila as the source of all sources of state law is used as a paremeter in actualizing religious values and religious norms intended to strengthen the practice of Pancasila values such as the intention of the Supreme Godhead.

This can be found in consideration of Law No. 44 of 2008 concerning Pornography that the Indonesian state is a state of law based on Pancasila by upholding the moral values, ethics, noble ahlak, and noble personality of the nation, having faith and devotion to God Almighty, respecting diversity in the life of society, nation and state and protecting the dignity and dignity of every citizen. So that the application of the Pornography Law which is required by the enforcement of religious values has been in line with the personality values in Pancasila as the noble value of the Indonesian nation.

Second, the existence of the principle of interconnection that complements each other does not negate each other The tradition of interline legal methods has been carried out by Law No. 1 of 1974 concerning Marriage which accepts religious law into state law as built in the construction of article 2 paragraph (1) that marriage is valid if it is carried out according to the laws of each religion and belief. and the state through the provisions of Article 1 paragraph (2) which reads Every marriage is recorded according to applicable laws and regulations.

The government provides legal certainty and legal protection for a marriage.

This combination of laws presents a pattern of complementary and strengthening relations between religious law and state law in a legal unity with the instrument of the state Marriage Law protecting all religious believers in carrying out their marriages, the state gives authority to carry out marriages in accordance with the terms and norms regulated in their respective religious laws and the state through the government with its administrative law regulates the provisions for recording marriage to provide evidence through a marriage certificate as authentic evidence of a legal married couple in the eyes of the state so that descendants born from a marriage have a clear relationship of civil rights and obligations.

The same can be found in Law No. 23 of 2011 concerning Zakat Management, the interests of religion and the state are integrated in one legal unit of zakat management, on the one hand the state facilitates religious people to carry out their religious obligations and regulates BAZNAS institutions nationally to be effective, on the other hand, the utilization and management of zakat becomes an institution in helping the government alleviate poverty, this can be seen in the provisions of article 27 of the Law on Zakat Management, which Zakat can be used for productive efforts in the context of handling the poor and improving the quality of the people.

Furthermore, Law Number 39 of 1999 concerning Human Rights (Human Rights Law) which makes religious law the basis for acting or doing legal acts for a woman, in Article 50 of the Human Rights Law reads:

> *An adult and/or married woman has the right to do her own legal acts, unless otherwise provided by her religious law.*

Both laws position religious law as the main condition in the validity of a marriage and religious law is the limiting variable of women's legal subjects in carrying out legal acts including diantaraya performing marriage acontrario article 50 of the Human Rights Law indicates that an Islamic woman is not entitled to perform legal acts such as marriage if prohibited by Islamic religious law.

The inclusive character of the law is also shown in the state in Law No. 44 of 2008 concerning Pornography which one of the

objectives in Article 3 letter a of this Law is to realize and maintain an ethical order of public life, noble personality, uphold the values of the Almighty God and respect the dignity and dignity of humanity. This shows that the Law uses religious norms as a source of value in the formation of legal norms.

The concept of the principle of interconnection in law is in line with Jawahir Thontowi's thoughts on inclusive legal theory which one of the basic assumption variables is Non-linear which places law as a system of norms that can accept other auxiliary sciences or non-linear in finding truth and justice in answering legal problems that arise, the Pancasila law state in its legal development places law not purely independent but influenced by non-legal science such as religion, customs and international law.[37]

So that the expected reproduction of Islamic law is the values of Islamic law that complement each other rather than negate each other with other legal systems So that in the context of legal anomalies in legislation, it is necessary to harmonize and synchronize so that one law does not conflict with each other, a balance point is sought between giving everyone freedom to meet their legal needs and protecting the community from these freedoms.

Conclusion/Concluding Remarks

The values of globalization have greatly influenced nation states including Indonesia not only in the economic, social, cultural, technological fields but also in the legal field as a result sharpening the occurrence of legal pluralism between religious law, western law and state law in Indonesia. In the current study there are 2 (two) major views, namely first that globalization has a significant effect on countries if not prepared will be left behind and will even bring the destruction of nation states and second, globalization not only affects countries but also under influence in various fields such as the economic field, also the social, cultural, technological and trade fields including the implications of globalization on law will eventually giving birth to diversity or legal pluralism in society, especially those that apply Islamic law, including the Indonesian state where the majority of citizens are Muslim.

[37] Darwin Botutihe et al., "Pembangunan Hukum Dengan Pendekatan Teori Hukum Inklusif Pada Negara Hukum Pancasila," *Jurnal Al Himayah* 3, no. 1 (2019).

Islamic law in the Indonesian context has been understood to have a very strong interrelation and causality relationship in addition to the state guaranteeing religious rights in the 1945 NRI Constitution but also Islamic law being a source of persuasive laws such as Law No. 1 of 1974 concerning Marriage, Sharia Banking law, Hajj implementation law, zakat management, waqf, Aceh special autonomy law to halal product law. The concept of reproduction of Islamic law in the dimension of Indonesian law cannot be separated from the position of Pancasila as the source of all sources of State law, therefore, in facing the era of globalization of Islamic law reproduction to revive Pancasila values containing religious values in strengthening national law to harmonize a number of contradictory state laws such as the interfaith marriage law between the Marriage Law and the Population Administration Law creating a legal dualism that actually eliminates the philosophy of the purpose of marriage itself.

The inclusive reproduction model of Islamic law is built through (3) basic assumptions as a basis in actualizing Islamic law in the development of the national legal system, namely: *First* , Based on the values of Pancasila and the existence of the principle of interconnection that complements each other does not negate each other, actualization of values, principles and norms of Islamic law in laws and regulations as an effort in building national laws that advance life others, enlighten the life of the nation better according to the ideals of the law and the goals of the Indonesian nation.

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