

Democratic System in the Indonesian Constitution According to *Maqasid Shari'ah*

Alamsyah^{1*} Raesitha Zildjianda¹

¹*Faculty of Syariah, Universitas Islam Negeri Raden Intan Lampung, Bandar Lampung, Indonesia*

^{*}*Corresponding author. Email: alamsyah_pps@yahoo.co.id*

ABSTRACT

The modern world's system of democracy originates from the West, as does democracy in Indonesia. Because of its Western origin, many of Indonesian Muslims consider it as not Islamic, and not in line with the government systems that had ever existed in Islamic history, that is, the putative Islamic khilafah (caliphs) or Islamic empire. Therefore, they refuse the implementation of democracy in a Muslim country like Indonesia. This paper analyzes whether or not the democratic system in Indonesia is in line with Islam. In doing so, this research uses the qualitative method, and takes up the theory of maqasid shari'ah for assessing the compatibility of democracy in Indonesia with Islamic values. The results indicate that Islam, as long as it bases its teachings on the so-called maqasid shari'ah (purposes of the Islamic law) is able to adapt to the development of time. Democracy, which gives equal rights to all humans of different backgrounds, is in line with the Islamic principles, which hold dear the values of justice and equality ('adalah wa musawah), and the teachings that Islam is revealed as a blessing for all mankind (rahmatan lil 'alamin). Thus, this paper concludes, the Indonesian democratic system does not contradict to the Islamic principles of state administration, which are based on the maqasid shari'ah, that is, to create justice, equality and freedom.

Keywords: *Democracy, Indonesia, maqasid shari'ah*

1. INTRODUCTION

Based on epistemology, religion and democracy are different. Religion comes from revelation while democracy comes from human thoughts: yet both are still related in life. The difference of empirical basis will not hamper these two concepts for finding a common ground, that is all of them aims at creating good virtues to all mankind. The right form of democracy is the one that is based on thoughts, context-sensitive, and of cultural particularities. It is also bound on a principle of people's sovereignty and has some respect for human rights.[1]

There are two reasons why democracy has become a social and governmental system in Indonesia. First, almost all countries around the world have made democracy as a fundamental principle. Second, as the state's principle, both the content and concept of democracy have given some directions about roles of the people, so that it is considered appropriate to implement democracy in Indonesia.

Modern democracy consists of four basic principles. They are the principle of ethics, integrity and morality, the principle of constitutionalism, and the principle of accountability public.[2] Thus, democracy guarantees public participation in the decision making process. Indonesian Democracy is based on the state's five ideological principles, called Pancasila, which substantially composes all the principles and elements of democracy that has been already mentioned. The

Pancasila state guarantees freedom of its people to practice their religions. The state does not separate political life from that of religion. The state does not give a chance for communism to thrive in the society.[3]

Democracy basically originates from Western culture in Europe, especially after the French Revolution in 1779 AD. This revolution has fundamentally removed class differences in society, involved people in the process of government's decision making, and eliminated state dictatorship. With the revolution, democracy is generated within people, by people and for people. Democracy then spreads across many countries, including to Muslim countries or countries where majority of the population is Muslim.

In Muslim societies such as Indonesia, democracy has been well accepted as a political system by which people express their citizenship. The founding fathers of the Indonesia have agreed upon making Pancasila as the state philosophical foundation, and the 1945 Basic Constitution as the Indonesian State's Constitution. The Indonesian Constitution clearly adheres to democratic principles. For example, the Indonesian president is elected by the people through general elections, and he is responsible to these people, through the People's Consultative Assembly. Regional heads such as governors and regents are also selected democratically by the people. In this democratic system, all Indonesian is basically allowed to become head of the state or propose themselves as head of the state.

Although it has been accepted in the constitution, a small number of Muslims in Indonesia refuses democracy as the

state's political system. This is because, as democracy originated from the West, it is considered by them as in contradiction with the teachings of Islam, and with the presumed existence of Islamic state (*khilafah*) throughout the history of Islam. For them, the state's leader must be a Muslim and should never be a non-Muslim. In other words, they are willing that Indonesia becomes a religious state. That is one that is on Shari'a, (which is derived from the Qur'an and the Hadith) not on the Pancasila and the 1945 State Constitution. Their aim is to fight for the establishment of an Islamic state, that is done constitutionally through the parliament, under the vehicle of Islamic political parties, such as the Prosperous Justice Party (PKS) and the Crescent Star Party (PBB). But some tried to do it with violence, such as the *Darul Islam* Indonesian Islamic Army rebellion (DII/TII) or through suicide bombings, or the terrorists attacks. All these efforts, both constitutional and terror, are always fail and nothing works.

Because of such refusal toward democracy by some Muslim groups, it is important to examine whether or not democracy is in contradiction with Islam. This paper will do it by using the theories of *maqasid shari'ah*, which I will explain shortly below. The results of this study are expected to clarify the position of democracy in Indonesia: is democracy compatible with Islam, or not?

2. THEORETICAL FRAMEWORK

We decided to use the theory of *maqasid shari'ah* because of its fundamental function as a guidance for the establishment of laws and regulations in Islam, while at the same time democracy can be considered as a system of regulation of the modern statehood. Hence, democracy is compatible to be approached by the theory of *maqasid shari'ah*.

Maqasid shari'ah refers to essential objectives of the sharia law. It is the objectives by which an Islamic law is enacted by a (group of) Muslim scholars (*ulama*) through the long processes of *ijtihad* (intellectual inquiries).[4] Muslim scholars specializing in Islamic jurisprudence argue that the establishment of God's law in the form of sharia law must be purposed for enhancement of public welfare or public interest (*maslahah*), be it related to human's lives in the world or in the hereafter. Because of this, in order to determine a legal status of a case, Muslim legal scholars have to consider the aspects of *maqasid shari'ah*, so that their decision about the legal status of that case is supporting the welfare of all mankind.[5]

A pluralistic society certainly brings good impacts on humanity. Yet, it also often comes with tension, or even conflict and separation between groups in that society, since each group will put their best efforts to defend their identities including those of ideology and religion.[6]

The post-reform period in Indonesia has given rise to political forces that are based on political identity and primordial reasons. At the same time, the government's policy of decentralization has opened an

access for many Muslim groups in local regions to include their ideological values into the region's regulations many of which take in the form of normative sharia and are some what discriminatory and violating the rights of the minority's interests. It is at the point that the use of *maqasid shari'ah* becomes significantly relevant in order to examine the compatibility of democratic systems in Indonesia, which is called the Pancasila democracy, with Islam.

Political expert J. Kristiadi mentions ten pillars of democracy. These are people's sovereignty, governance based on the governed agreement, majority's rule (election results), guarantee of minority rights, guarantee of human rights, equality before the law, a just legal process, limitation of government power through the constitution and the social, economic and political pluralism, and the development of the values of tolerance, pragmatism, cooperation and consensus.

2.1. *Maqasid Shari'ah as the Foundation of Politics and State Administration*

Literally, *maqasid shari'ah* is a combination of two words *maqasid* and *shariah*, with various meanings, such as going towards a direction, a goal, a middle, fair and not exceeding the limit, and a straight road.[7] In this regard, *shariah* means a path to springs or a way to arrive at the principal sources of life.[7]

From the literal meaning of *maqasid shari'ah*, we can derive an understanding that *maqasid shari'ah* is implicit goals and intentions that are laid down by God, and are composed in every law, for the welfare of the people.

Imam al-Ghazali stated that in Islam, there are five essentials of human well-being that have to be protected, which are called *al-kulliyat al-khams* (the five essentials). They include, a protection of religion (*hifdz al-din*); a protection of life (*hifdz al-nafs*); a protection of intellectualism (*hifdz al-'aql*); a protection of ancestry (*hifdz al-nasl*); protection of property (*hifdz al-mal*). All of these principles are based on the Qur'an and Hadith (Prophet's traditions).

These five principles are definite rules. These principles are the basis for establishing all legal rules in Islam, both in worship-related laws and that of human relations, including in politics and state administration. The political system and constitutional law in Islam must be based on the principle of protecting the five main objectives above. The appointment of a leader and the enactment of a constitutional law, all are regulated to ensure the organization of religious practices and expressions, the security of human life, the improvement of human intelligence, the security of human's properties and decent ways of living, and the protection of rights, obligation and honor of a family life and ancestry. These are aspects of human life that must be protected and guaranteed by the state.

2.2. Indonesian Democracy

Democracy is a government system in which the supreme power is ruled by the people and the people have an authority to determine both the future and the governing legislation of the country.[8] In this system, the people decide the rules related to aspects of life and state policy. What is meant by “the authority is owned by the people” is that *the government is of the people, by people, and for the people*. A government is a democratic one if the three things above are implemented and enforced in and by the governance of that government.[8]

In a democratic country, law must not be made, determined, interpreted, and enforced on the basis of power only (*machstaat*), because democracy must be regulated on the basis of law. Implementation of ideas of democracy requires legal procedures in order to prevent monarchy, which threatens the implementation of democracy.[9]

Democracy in Indonesia has been developed through several stages and forms. The period of 1945 – 1959 was known as the parliamentary democracy. This parliamentary system had existed a month after the country’s independence was proclaimed. However, this form of democracy is considered inappropriate for Indonesia. Democracy in the period of 1959-1965 was referred to as the guided democracy. The characteristics of this democracy is the political dominance of the president’s and the growing communist influence and the role of the army in the national politics arena.

While the period 1965-1998 was called the New Order’s democracy under the rule of President Soeharto. In this period, all power was controlled by the state held by the New Order regime. The general election as a symbol of democracy was implemented, but its implementation was manipulated by the ruling regime, and was full of intimidation to groups of different views from those of the government. General election was just a camouflage of the policy of the ruling dictators. Thus the general election is not aimed to create a credible new government, but rather to strengthen the New Order’s government.

The Period of 1998 - now, is referred to as the democracy of the reformation era. Reform movement demands implementation of democracy and a consistent protection of human rights. In this era, the chance of democracy is opened widely. Dozens of political parties emerged and took part in the first general election in 1999. Various regions demanded changes, which gave rise to the enactment of the regional autonomy law. The right to speak up, and freedom of speech, that have been silenced during the New Order era, are opened up freely, even now seem to be excessive. The mass media are established to criticize the government, a phenomenon which was previously impossible. The president and regional heads is directly elected, and not represented by the People’s Consultative Assembly (MPR) and the Regional Representative Council (DPRD). It is the clearest result of this reform era democracy. Although democracy in the reform era is much better than in the previous era, it still have problems. The implemented democracy is more

procedural and has not yet fully touched on substantive democracy. Although the people can directly vote and oversee the government, their role is still limited as a voter. In the future, the the people supervision must be improved and get involved in order to create a government that is strong, clean, transparent and responsible. Protection of human rights and cases settlement also have to be done properly, so it manifest integrated law enforcement in organizing the state.[10]

In the contemporary era, Indonesia is the largest Muslim country that applies democracy, and is the third largest democracy after the United States and India. Pancasila is the spirit and basis for the implementation of democracy in Indonesia.

2.3. Maqasid Shari'ah's Views of Indonesian Democracy

One of the principles of Islam is freedom. This is in line with democracy which carries the doctrine of freedom. In Indonesia democracy, freedom of religion has been guaranteed, as stipulated in the 1945 State Constitution article 29 paragraph 2 which states that the state guarantees the independence of each population to embrace their respective religions and worship according to their religion and beliefs, regardless of religion and belief. With this provision, nothing of intimidation movement may prohibit adherents of certain religions, or certain beliefs, from worshipping. Moreover, with this rules, there can be no compulsion in choosing and embrace their religion. The attitude of tolerance and respect for different religious communities must be sustained.

Pancasila is the country's best foundation in respecting and maintaining diversity and pluralism in Indonesia. Nurcholish Madjid, an Indonesian Muslim leader said that Indonesia is not a theocratic state, nor a secular state, but Indonesia is a country based on Pancasila. All of the principles and contents composed in the Pancasila, have already been very well in accommodating the diversity.

According to Ibn Khaldun, there are two forms legal country, namely *siyâsah dîniyah*, which Muhammad Taher Azhari called Islamic nomocracy, and *siyâsah 'aqliyah* or secular nomocracy. Indonesia it self basically adheres to *siyâsah dîniyah*, in which both Pancasila and religion are seen as two interrelated elements that cannot be separated from one another. They complement each other: Pancasila with the rationality of thinking to form a state and government, while religion is a counter weight, and the one that harmonizes the moral values with the religious values.[11]

Islam can accept Indonesian democracy because Muslims in Indonesia are given freedom to practice their religion. This is in line with the first principle of *maqasid shari'ah* which is to guard religion. The application of Islamic law in Indonesia also exists and can be implemented in two ways. First by means of faith and piety. The people who are Islam can implement Islamic

law individually in accordance with the quality of faith and piety of each individual.

The practice of Islamic law through this method is guaranteed by the state in accordance with Article 29 paragraph (2) of the 1945 State Constitution. The second is through state constitution. The integration of Islamic law into laws and regulations in Indonesia can be divided into two models. Firstly, the penetration of Islamic law into the contents of the law itself, even though its name is not specifically stated as Islamic law such as marriage law.[12] Secondly, the making of a special law regulating the implementation of Islamic law and named according to the name of Islamic law, such as *zakat* (alms), *wakaf* (donation of property for religious uses), *hajj* (pilgrimage), and sharia banking.

Democracy Pancasila itself has noble value originated from the five principles of Pancasila, namely religiosity value, values of kinship, alignment values, populist values, justice value. It has the ability to enforce and do justice to a fellow human being and justice for all people of Indonesia.[10]

Out of all the pillars of democracy above, there is no contradiction with the *maqasid shari'ah* in terms of the protections of religion, life, intellectualism, ancestry, and property. The elements of *maqasid shari'ah* has been completely composed in democracy of Indonesia, which is reflected by many pieces of legislation which compose Islamic values or laws on it. The first element of the *maqasid shari'ah* is to guard religion. This is in line with the 1945 State Constitution which has guaranteed our freedom of religion. This is stated in article 29 paragraph (1) and (2) and article 28E paragraph (1).

Even more, in the pillars of democracy, our rights to protect religion are reflected in pillars of democracy number 2 through 5. In this regulation, the government does not make decisions unilaterally, but must ask an approval from the people through the House of Representatives, especially in making religious rules. In this democracy, the government also pays attention to the rights of the majority and minority in Indonesia. This is an important rule so as to make sure the sovereignty of the people.

Maqasid shari'ah stipulates that there is a protection of life and a prohibition on killing or eliminating the lives of others. The principle is also regulated and elaborated in the 1945 State Constitution of the NKRI article 28 A and Article 28 H paragraph (1) stating that " *Every individual has the right to live and has the right to survive the life and his life.*"[7] and article 28 H which states " *Every individual has the right to develop themselves through the fulfillment of his basic needs, the right to receive education and benefit from science and technology and art and culture, in order to improve his quality of life and for the welfare of humanity.*"[7]

In the democratic rule of law in Indonesia, it has been guaranteed and stated that the government will guarantee human rights and values of tolerance in the nation and protect the dignity and respect of both body and soul.

In addition, to guarding the life, the democratic Indonesian government system also guards us mentally or intellectually. In article 28 C paragraph (1) and (2) and article 28 E paragraph (1) of the 1945 State Constitution states " *Every individual has the right to develop themselves through their basic needs, the right to receive education and to obtain benefit from science and technology, art and culture, in order to improve the quality of life and for the welfare of mankind. Every individual has the right to advance himself to effort for his collective rights to develop his community, nation and country.*"[7]

Indonesian democracy guarantees human rights of all citizens. In the human rights, freedom is expressed in terms of thinking and expressing speech, as well as developing ideas, there should be no restrictions in thinking and expressing speech. This guarantee of freedom of thought and expression of speech is in line with the *maqasid shari'ah* which affirms the guarantee of intellectual (*hifz'hul 'aql*).

The *maqasid shari'ah* then guarantees the possession of property. This provision has been guaranteed in the 1945 State Constitution in article 28 G which states " *Every individual has the right to protect himself, family, honour, dignity, and property under his authority, and is entitled to a sense of security and protection from the threat of fear to act or not doing something which is a human right.*"[7]

The final value guaranteed by the *maqasid shari'ah* is the right to obtain children. Democracy in Indonesia as regulated in 28 B paragraph (1) and (2) state that " *Every individual has the right to create family and receive lineage through a legal marriage. Every child has the right of survival, growth and development and is entitled to protection from violence and discrimination.*"

The Indonesian government does recommend family planning with two children, but there have never been any regulations that limit or even forbid people to have children. The country even provides facilities to ensure the life for the family, ranging from education, food and clothing, the economy and the different needs to be provided by the government.

The analysis above shows that the democratic system in Indonesia is in line with the principles and objectives of sharia, or the *maqasid shari'ah*. In Indonesia as a democratic country, religion and the state are not a single unit, but they are not separated either. Religion and the state are interrelated and shared to one another. Religion (Islam) carries basic values in the country, as composed in Pancasila, while the state guarantees freedom of practicing religion and provides religious facilities. Indonesia is not a religious state but not a secular state too. The country does not make a particular religion as a state religion but rather recognizes the religion of its people. This form of democracy distinguishes Indonesia both to secular states in the Western world, Islamic states in the Middle East. If in a secular state religion is completely separated from political and public life, while in Indonesia, religion is always involved in state activities, even though it is not part of the state itself. Meanwhile, if in a religious state, all matters are regulated by certain religious norms, then in a

state based on Pancasila, it is regulated according to the Pancasila values.

The view which claims that democracy in Indonesia is contradictory to Islam is rejected by the analysis above. They assume that democracy is man-made and then idolized and even worshiped like a God. Thus, democracy for that group is considered as a worshiped idol (thoghut), so that it must be rejected. The Republic of Indonesia and its officials are accused of being heretical states and must be converted to Islam, into the *khilafah* (caliphate) system. This view is obviously denied by the results of the analysis above.

4. CONCLUSION

Based on the analysis above, this paper concludes that Indonesia, as the largest democratic Muslim country in the world, has tried to show to the world an ideal form of democracy, one that generates common welfare to society, that is based on the Indonesian experience. The Indonesian democracy is the one that is based on the state's ideological principles of Pancasila, which are flexible in nature, and accommodating to global political changes, in which democracy is part of the plan and procedure for human's development. The contribution of Islam and Pancasila to the democratization process through the reform era has positive results for Indonesia position in the world, both as the most democratic Muslim country, and the biggest democratic country in the world, after the United States and India.

The democratic system in Indonesia is compatible with the principles and objectives of the *maqasid shari'ah*, from the first pillar to the other four pillars. Democracy is also in line with the teachings of the Qur'an and Hadith. The *khilafah* (caliphate) system that was once practiced in the past is no longer suitable to be applied in the modern world, including in Indonesia. The *khilafah* system is in contradiction with the modern world, which is open, advanced, united and egalitarian. Thus, the democratic system as it is now applied in Indonesia is a system that is in line with both Islamic principles and the Islamic legal principles.

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