

The Role of Religion In The Constitutions of Indonesia and Pakistan: Comparison of Islamic Constitutional Law

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Abstrak

Tujuan mengetahui kedudukan agama dalam konstitusi negara adalah mengetahui bagaimana perlindungan Hak Asasi Manusia dan apa saja yang menjadi nilai-nilai luhur yang mengatur kehidupan warga negara, karenanya agama dalam konstitusi menjadi salah satu dari sekian tolak ukur penyelenggaraan negara, norma konstitusi menempatkan agama untuk menempati yang penting dalam kehidupan bernegara sehingga konsekuensi lain dari pelaksanaan nilai-nilai agama dalam bernegara adalah kebijakan pejabat negara dan perilaku warga negara tidak boleh bertentangan dengan nilai-nilai agama. Penelitian ini menggunakan pendekatan normative melalui studi pustaka seperti peraturan perundang-undangan, buku, jurnal hukum, dan media online. Hasil analisis menunjukkan bahwa dalam hal konstitusi dalam negara Indonesia dan Pakistan terdapat beberapa perbedaan mendasar yaitu mulai dari penggunaan nilai norma, lembaga negara, sistem pemerintahan, kemajemukan sosial maupun implementasi konsitutusnya mengingat Indonesia bukanlah negara Islam sedangkan Pakistan adalah negara Islam namun masih ada pula beberapa persamaan antara negara Indonesia dan Pakistan, namun dari hal tersebut menunjukkan apabila hanya agama saja yang digunakan dalam konsitutusi tanpa memperhatikan kebutuhan masyarakat dalam hal sosial, ekonomi, politik dan budaya justru hal ini akan menjadi masalah yang besar, perlu mempertimbangkan pula setiap komponen kenegaraan dan kemasyarakatan yang memerlukan porsinya masing-masing

Kata kunci: Demokrasi; Indonesia; Konstitusi; Perbandingan; Pakistan

Abstract

The purpose of knowing the position of religion in the state constitution is to know how to protect human rights and what are the noble values that regulate the lives of citizens, therefore religion in the constitution is one of the benchmarks for the administration of the state, constitutional norms place religion to occupy the important in the life of the state so that another consequence of the implementation of religious values in the state is the policies of state officials and the behavior of citizens should not conflict with religious values. This study uses a normative approach and uses a qualitative analysis methodology with data collection techniques through literature studies such as legislation, books, legal journals, and online media. The results of the analysis show that in terms of the constitutions in Indonesia and Pakistan, there are several basic differences, starting from the use of norms, state institutions, government systems, social pluralism, and the implementation of the constitution considering that Indonesia is not an Islamic country while Pakistan is an Islamic country but there are still some similarities. between Indonesia and Pakistan, but this shows that if only religion is used in the constitution without paying attention to the social, economic, political, and cultural needs of the community, this will become a big problem so it will need to share

Keywords: Comparison; Constitutions; Democracy; Indonesia; Pakistan

Introduction

Previous research was initiated by Anugerah Yuka Asmara related to Government Constitutional Setting: Comparison between Indonesia, Pakistan, and China, so that the difference with this study is analyzed more deeply related to religion and constitution in Indonesia and Pakistan. The Indonesian constitution does not separate religion from the state but its presentation in the constitution is balanced with other values, this is because the human right to freedom of religion is guaranteed by the state, and religious values are the source of state policies so that all forms of policies that are contrary to religious values are contrary to

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the constitution. In general, it essentially explains that the 1945 Constitution as the Supreme Legal Unit is not only needed as a unit, not only as a guide for the interests of managing state power (constitutional politics), but also as a guide for the dynamics of social activities (social constitution), and even more refers to activities in other, more complex fields³. Therefore, the nature of divinity and religion is certainly not only reflected in the constitution and the actions of state officials, it is reflected in the dynamics of community activities and social life, in terms of religion in the Indonesian state constitution, its nature limits the scope of state power which is mandatory and it lies in the dynamics of social life and political dynamics. For this reason, therefore, the 1945 Constitution and religion must serve as guidelines in the fields of state, society, and religion. This is certainly similar to Pakistan which does not separate religion from the state, but in Pakistan religion is included in the constitution and in a very large percentage it contains religious values than other values that exist in society, of course, this is the benchmark for differences between the Indonesian state and the state. Pakistan, the state of Pakistan uses religious law or Islamic teachings as its constitution so that everything comes from Islamic law even though there are differences in interpretation (between Sunny and Shia followers) so that it is very clear that religion has always been used as the main guideline in managing state power (constitutional politics), in addition to it serves as a guide for the dynamics of social activity (social constitution), and even for activities in other, more complex fields.

Method Research

The approach method used in this study is a normative juridical approach. This research is included in the type of normative research, or what is called field research, namely examining the applicable legal provisions and what happens in reality in the legal research community regarding the enforcement or implementation of normative legal provisions in reality in every particular legal event that occurs in society with the intention of to find out and find the facts and data needed, after the data needed is collected then it goes to problem identification and problem solving⁴. This approach is implemented by examining library materials (primary) or secondary data⁵. In this research, the library materials used are books, scientific journals, scientific works, and data related to "Religion in the Constitutions of Indonesia and Pakistan".

In addition, this research is descriptive-analytical, descriptive-analytical research is a research method that functions to describe or provide an overview of the object under study through data or samples that have been collected as they are without analyzing and making conclusions that apply to the public⁶. The author chose the use of qualitative methods in this study because this study aims to find out how "Religion in the Constitutions of Indonesia and Pakistan" and then see what differences and similarities are contained in it and its relation to the comparison of constitutional law between Indonesia and Pakistan.

³ Jimly Asshiddiqie, *Indonesian Constitution and Constitutionalism* (Jakarta: Konstitusi Press, 2005).

⁴ Suharsimi Arikunto, *Research Procedures: A Practical Approach* (Jakarta: Rineka Cipta, 2012).

⁵ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview* (Jakarta: PT. King Grafindo Persada, 2001).

⁶ Sugiyono Sugiyono, *Research Methods (Quantitative, Qualitative, and R&D Approaches)* (Bandung: Alfabeta, 2013).

Results and Discussion

Religion in the Constitution in Indonesia

The Indonesian constitution does not separate religion from the state but its presentation in the constitution is balanced with other values, for the Indonesian state, all legal actions carried out, including in implementing laws and regulations and enacting provisions or decisions (*beschiking*) must ensure the existence of religious values by the community and provide legal protection so that the implementation of religious rights does not result in violations of the implementation of these rights. However, many government actions appear to prevent a person from exercising his religious rights.

In Indonesia, there is a basic debate on the administration of the state between nationalist groups and religious groups, regarding whether it is based on religion or separating religion from the state. between nationalist groups and religious groups continued Bargaining continued until a small committee consisting of 38 people was formed, and then a Committee of Nine was formed, whose members consisted of: Soekarno, Hatta, Wachid Hasyim, A. Maramis, Abikusno Tjokosujoso, AK. Mudzakir, H. Agus Salim, Achmad Subardjo, and Moh. Yamin. In terms of group representation and views, the Committee of Nine has accommodated groups who think that Islam should be the basis of the state and groups that do not want it⁷. There were even representatives from non-Muslim groups. After going through in-depth and critical discussions, then on June 20, 1945 the Committee of Nine finally succeeded in agreeing on the Preamble to the Constitution, known as the Jakarta Charter⁸. This agreement is called a sublime agreement (*modus vivendi*), because it is an agreement with all groups who previously had different views, as well as a form of compromise.

Even at the constitutional meeting tasked with reformulating the Indonesian constitution in 1955-1959, even in this case the debate related to religion in the constitution re-emerged until it experienced a deadlock even though deliberation had been carried out then Soekarno issued a Presidential Decree of July 5 1959 in which the Jakarta Charter had always been animates and is an inseparable part of the 1945 Constitution, the end of the polemic regarding the relationship between religion and the state in the formation of the 1945 Constitution at the beginning of independence. The final formulation of the provisions in the 1945 Constitution relating to the relationship between religion and the state are:

1. The First Precepts of Pancasila contained in the Preamble to the 1945 Constitution are: "Belief in the One and Only God."
2. Article 29 paragraph (1) of the 1945 Constitution reads: "The state is based on the One Godhead."
3. Article 29 paragraph (2) of the 1945 Constitution reads: "The state guarantees the independence of each resident to embrace their own religion and to worship according to their religion and belief."

⁷ Ahmad Sadzali, "Hubungan Agama Dan Negara Di Indonesia: Polemik Dan Implikasinya Dalam Pembentukan Dan Perubahan Konstitusi," *Undang: Jurnal Hukum* 3, no. 2 (December 1, 2020): 341-375, <https://ujh.unja.ac.id/index.php/home/article/view/135>.

⁸ Pieter Radjawane, "Religious Freedom as a Constitutional Right in Indonesia," *SASI* 20, no. 1 (2014): 30-36.

So that in this case there is not the slightest obstacle to enacting Religion (Islam) in Indonesian laws and regulations, all policies must not conflict with religious values, then another consequence of the implementation of religious values in the state, religious life is managed by the Ministry Religion. In secular countries there is no ministry of religion because there is no relationship between religion and the state, while in a country based on a religion there is no Ministry of Religion because all state life must be carried out based on religion, then in other matters related to the constitution and religion it is stated in the Presidential Decree. Abdurrahman Wahid Gus Dur to inaugurate 6 religions in Indonesia.

In this case, it means that the 1945 Constitution or the Constitution does not separate religion from the state, freedom of religion is guaranteed by the state, religious values are the source of state policies, all policies that are contrary to religious values are contrary to the constitution, religious rights are recognized. part of human rights that are guaranteed and recognized internationally in the International Covenant on Civil and Political Rights which was adopted by the United Nations in 1966, then ratified or ratified into Law Number 12 of 2005 and then regulated Also in the provisions of Article 18 paragraph (1), the state guarantees the protection of the rights of citizens to embrace religion and carry out the teachings of their religion. The state is even present to facilitate religious people to be able to carry out their religious teachings safely, peacefully and calmly, also in the establishment of houses of worship. The indicators can be seen in Article 29 paragraph (2) and Article 28E paragraph (1) of the 1945 Constitution; Article 18, Article 39 paragraph (2). religious values become one of the considerations used to limit freedom in exercising human rights so that there is no absolute freedom in exercising human rights. The indicator of this is especially in the 1945 Constitution after undergoing a series of amendments in 1999-2002, which indeed pays more attention to human rights issues. In Article 28J paragraph (2) of the 1945 Constitution, religious values are mentioned as part of what is considered in the limitation of human rights. Although religion is the basis of the constitution, it has a different function. Religion in the constitution is also influenced by pressure and the majority in the territory of the state, therefore it always colors the main function of the constitution as the supreme law. Religion in the constitution equally limits power (limiting state power), but religion is more active in the field of civil society with the main goal being to free people to follow their beliefs according to their conscience as human rights regulate them and as long as people's actions do not conflict with good values. Besides, the main function of religion in the Indonesian constitution is to strengthen people's lives in the nation and state. Therefore, whoever is trusted to get a public office, the state must make an oath or promise related to their obligations and the morality of everyone in accordance with the sacred beliefs of their religion, this is implemented by taking the oath or promise of the inauguration of the President and Vice President. In accordance with Indonesian law⁹, that is stated in Article 9 of the 1945 Constitution is a sign of the legitimacy of religion in the Indonesian constitution, especially in the state of Indonesia to become a leader of the state, it is prioritized to come from the religion of the majority of the Indonesian population, namely Islam, but this does not rule out the possibility for non-Muslims to nominate themselves for others. However, according to the 1945 Constitution, Indonesian law only regulates the case that before making an official oath or promise, public officials have not

⁹ Jimly Asshiddiqie, *Indonesian Constitution and Constitutionalism* (Jakarta: Konstitusi Press, 2005).

been legally formalized to carry out their duties and authorities, so that religious aspects are prioritized¹⁰.

In terms of the Indonesian legal system, the existence of an eclectic concept of various religious teachings in the formation of public law is of course the influence of Article 29 of the 1945 Constitution on various legal products produced by the state. Indonesian legal politics carries out the unification of public law by concocting universal values of various religions that live in society. Meanwhile, private law or civil law fields are free to use the teachings of their respective religions because they are protected by the state based on the article, in various Indonesian legal products it cannot be neutral, let alone contrary to religious values. Various laws and regulations to court decisions are colored by values taken from religion¹¹. However, this does not mean that certain religious teachings are directly used in managing the state or that the state will take over the role to regulate religious life in society, religious values are very legitimate to color legal politics and public policy as long as they pass through democratic mechanisms, not being forced on adherents of other religions, and is not discriminatory and if there is a special legal product for the purposes of affirmative action for adherents of a certain religion, it is acceptable.

In other cases, Pancasila has a direct interest in carrying out state life in accordance with the ideals of the nation, so that in it there is a sentence that instructs all citizens to have God Almighty and to be obedient, namely in "Belief in One Almighty God" so that no matter how complex Indonesia is Religion is always included in the aspect of the life of the nation and state, from that point of view, it is certainly not wrong if the state is responsible for providing religious space in its constitution¹². This is also considered to trigger religious awareness among citizens, when people are obedient and loyal to religious teachings can develop the ideal behavior of the Indonesian people in accordance with the noble values taught by all religions, therefore it is clear that religion needs to be embodied in the state constitution considering that religion is the need of every human being which is guaranteed by human rights, the principle of One God Almighty¹³. It has a different meaning from each religion, being the *causa prima* or the cause of other precepts. Therefore, in article 29 of the 1945 Constitution (UUD 1945) the basis of our country is Belief in One Supreme God, because this is the *prima causa* of the other precepts, by mentioning Belief in One Supreme God means already showing the precepts that are On the other hand, because the value of divinity also animates the other 4 precepts, religion is also emphasized in the Constitution on the purpose

¹⁰ B.J Boland, *The Islamic Struggle in Indonesia 1945-1972*, ed. Saafroedin Bahar's translation (Jakarta: Grafiti Press, 1985).

¹¹ Pan Mohamad Faiz, "Islam and Ideological Competition in Parliament (Case Study: Pros and Cons of Incorporating the 'Seven Words' Jakarta Charter into the Constitution during the Reformation Period)," *Jurnal Hukum & Pembangunan* 35, no. 2 (July 3, 2017): 217, <http://jhp.ui.ac.id/index.php/home/article/view/1464>.

¹² Irfan Idris, *Islam and Constitutionalism: The Contribution of Islam in the Drafting of the Constitution of Modern Indonesia* (Yogyakarta: AntonyLib, 2009).

¹³ Jimly Asshiddiqie, "God" and Religion in the Constitution, Friction Between the Ideas of "Godly Constitution Versus Godless Constitution" (Jakarta, n.d.), http://www.jimly.com/makalah/namafile/130/Tuhan_Dalam_Konstitusi.pdf.

of national education as stated in Article 31 of the 1945 Constitution which states that the government seeks and organizes a national education system that increases faith and devotion and noble character.

The polemic of the relationship between religion and the state was not completely finished with the agreement on Pancasila as the basis of the state. After independence, this polemic re-emerged in several discussions on the formulation of the constitution. But in the end, this polemic must submit to the noble agreement, namely Pancasila. Thus, the implications of the polemic on the relationship between religion and the state have so far ended in a noble agreement in the form of Pancasila¹⁴. The concept of a state based on Pancasila is still considered effective until now to unite the Indonesian nation in the Unitary State of the Republic of Indonesia. Religious polemics in the Indonesian Constitution do not divide parties or contain complicated situations, the Indonesian state and its people strongly recognize pluralism and tolerance as stated in the Quran Surah Al-Kafirun.

Religion in the Constitution in Pakistan

The legal system in Pakistan is based on Anglo-Saxon which is adapted to Pakistan's status as an Islamic state. British law can be induced into Pakistan's legal system as long as it does not conflict with Islamic values. Pakistan's legal system is also based on the Islamic legal system and accepts ICJ decisions with consideration. According to the constitution, all laws are made by the Shura Council or with the President. This is stated in article 234 paragraph 6 "Any law made by Majlis-e-Shoora (Parliament) or the President which is Include Majlis-e-Shoora (Parliament)"¹⁵ and plays an important and powerful role in the life of democracy in Pakistan. Other groups that also play an important role in democracy are ulama, both Sunni and Shia, and business groups. When Pakistan officially became an Islamic state, this country faced many responsibilities in terms of supporting the form of nationalism as a symbol of the unity of the Islamic state between 2 quite different Islamic ideologies (Sunny and Shia) then it was necessary to integrate Islam with the state and a modern economy that was full of particularistic¹⁶. 2 trends in its formulation. First, is a traditional state based on Islamic law. Second, a modern nation-state based on Western legislation. This problem has caused a tug of war between the political leadership of the government and religious leaders, only after 9 years, finally, in the Pakistani constitution, it is formulated that the name of the country is the Islamic Republic of Pakistan with a form of democracy based on Islamic principles. This also creates problems when democracy becomes a system of government. in an Islamic country in this case all aspects of life cannot be separated from the touch of democracy, including other religions, as in Pakistan, Islam does not always go well with democratic values. In this case Islam and democracy are two different things, but substantially democracy has principles that are compatible with Islamic teachings. These principles include the principle of justice in law enforcement, equality in the life of society, nation and state although in terms of freedom of opinion it is still in a further process.

Between Islam and democracy is a long struggle among Muslim scholars. In this struggle, there are 3 groups with different views in formulating Islam and democracy. The

¹⁴ Syarif Hidayat Santoso, "Merenung Dari Pakistan," *Mkri.Id*, last modified 2015, accessed April 30, 2022, <https://www.mkri.id/index.php?page=web.Berita&id=11354>.

¹⁵ Fitri Wulandari, "Islam and Democracy in Pakistan," *Jurnal El Tarikh* 2, no. 1 (2021): 24-36.

¹⁶ Mohammad Waseem, *Patterns of Conflict in Pakistan: Implications for Policy* (Washington: Saban Center, January 2011).

first group is a conservative group that seeks to integrate Islam and the state so that Islam has clearly provided rules regarding society and the system of government, while the second group is a modernist and neo-modernist group who view that Islam has indeed provided rules regarding society, but only limited to ideas. just an idea. While the practice and implementation can adopt other systems, especially the Western system. The third group is a liberal group that seeks to separate Islam from the state¹⁷. According to this group, Islam has never given rules regarding society and the system of government. Pakistan experienced great turmoil in the state administration, especially in terms of constitution after Kasim Khan Suri, deputy speaker of Parliament, rejected the resolution of disbelief from the opposition because Prime Minister Imran Khan was considered a foreign conspiracy and violated the constitution so that opposition MPs protested in the assembly and ended with 197 MPs voted in favor of the no-confidence motion. The opposition coalition, which had previously submitted a resolution of distrust or a motion of no confidence, then appealed the decision of Deputy Chairman Kasim Suri to the State Supreme Court, in this case there was turmoil in the government and society due to the rejection of the resolution of disbelief (the motion of no confidence) which actually triggered the dissolution of parliament and of course led to the dissolution of the parliament¹⁸ and doubts on the entire contents of the Pakistani constitution. Although the Pakistani constitution absorbs a lot of religious values, namely the religion of Islam, in its implementation there are actually differences in understanding between Sunni and Shia Muslims, especially when Islamic law is legalized with the Hanafi school, which of course is considered inconsistent with *Ja'fari* law¹⁹. According to the author's opinion, religion in the constitution is not merely noble values that can unite and realize the interests of the community, but religion is the main guideline for state figures and the main guide in am making public policies so that they do not conflict with the values of goodness and do not harm the people of a country.

In the 1973 Pakistani Constitution it is stipulated that the main lines of Islam are, first, this country is a republic in the form of the name of the Islamic Republic of Pakistan. Second, Pakistan is a democratic country based on Islamic principles. Third, the head of state or president must be a Muslim. Fourth, the research center is tasked with assisting in "rebuilding Muslim society on the basis of true Islam". Fifth, "the unfavorable provision stipulates that no law which contradicts the Qur'an and the Sunnah of the Prophet may be enacted²⁰. Based on the above description it can be concluded that the Pakistani Constitution of 1956 reflects the ideological difficulties due to the lack of a systematic implementation statement on the basis of clear Islamic thought. In the constitution, the relationship between various aspects of modern life documents, such as the principles of democracy, popular sovereignty, the parliamentary political party system, and the equal rights of all citizens with Islamic principles is unclear. In fact, the traditionalists have advocated an Islamic state based on the full

¹⁷ Mukti Ali, *The Nature of Modern Islamic Thought in India and Pakistan* (Bandung: Mizan, 1993).

¹⁸ Khalid Ibrahim Jindan, *Theory of Islamic Governance According to Ibn Taimiyah*, Mufid Tran. (Jakarta: Rineka Cipta, 1994).

¹⁹ Santoso, "Merenung Dari Pakistan."

²⁰ Munawir Sjadzali, *Islam and Governance: Teachings and Thoughts* (Jakarta: UI-Press, 1993).

implementation of sharia in which there are no laws that are repugnant to Islam because they have accepted Islamic law in full. On the other hand, modernists have documents whose Islamic provisions can cause minimum difficulties.

Senators Sherry Rehman, Aitzaz Ahsan and Dr Arif Alvi are trying to make significant amendments to several laws in Pakistan under the guise of protecting national, religious sentiments and morality, as there have been massive violations of the basic rights of citizens, even restrictions on newspapers and TV stations can affect everyone's right to freedom of expression²¹. This may threaten civil society organizations and rights activists because it curbs human rights and gives law enforcement authorities excessive powers²². Even Prime Minister Imran Khan is considered a traitor for being Pakistan's first civilian ruler to violate the 1973 Constitution.

Comparison of Indonesian and Pakistani Constitutions

The similarities between the two countries, both Indonesia and Pakistan, are facing the problem in implementing democracy. Meanwhile, the difference is Indonesia implements democracy based on the values contained in Pancasila and emphasizes pluralism, while Pakistan implements Islamic democracy which is completely based on the Al-Quran and Sunnah. Nazir Hussain from Quaid-i-Azzam University, Islamabad, Pakistan explained that the concept of western democracy cannot be fully applied to an Islamic country, according to him, because there are several differences between the concept of western democracy and democratic values in the Qur'an and Sunnah.

In the socio-cultural dimension, Indonesia and Pakistan in general have several similarities²³. The process of establishing a state against the backdrop of the struggle for independence from the colonial rulers has shaped the same emotional character. The close relationship between the two countries is driven by the fact that both countries have the largest Muslim population in the world. The condition of ethnic and cultural diversity in the two countries, apart from being a cultural wealth owned by the two countries, is also a challenge in continuously fostering the spirit of unity and a sense of nationality.

There is even a relationship between the Fathers of the Indonesian and Pakistani nations, namely Soekarno & Muhammad Ali Jinnah, which is still very strong in the minds of the older generation. President Soekarno's name is enshrined in a large street and park, Soekarno Square Khyber Bazar (Soekarno Chowk) in Peshawar and Lahore.

There are similarities and differences of the Islamic democracy principle between Indonesia and Pakistan. The equation is contained in the principles of justice (Q.S. al-Syuraa verse 15), equality (Q.S. al-Hujurat verse 13), government accountability (Q.S. al-Nisa verse 58), deliberation (Q.S. al-Shura verse 38), and state goals (Q.S. al-Hijr verse 4). Meanwhile the difference between the two is in the Western democratic system which applies absolute sovereignty in the hands of the people, while in Islamic democracy the sovereignty of the

²¹ Fuji E Permana and Nashih Nashrullah, "UU Penistaan Agama Di Pakistan Yang Picu Polemik Publik," *Republika.Co.Id*, last modified 2020, accessed June 18, 2022, <https://www.republika.co.id/berita/qefrlf320/uu-penistaan-agama-di-pakistan-yang-picu-polemik-publik>.

²² Masykur Abdillah, *Democracy at the Crossroads of Indonesian Muslim Intellectual Responses to the Concept of Democracy (1966-1993)* (Yogyakarta: Tiara Wacana, 1999).

²³ Ministry of Foreign Affairs of the Republic of Indonesia, "Pakistan," *Kemlu.Go.Id*, last modified 2018, <https://kemlu.go.id/islamabad/id/read/pakistan/314/etc-menu>.

caliph/government is limited by God's laws, but basically Islam is very democratic, democracy itself was first introduced by Islam. Both Islam and democracy are oriented towards human nature. As can be seen in the principles of deliberation, equality, freedom of thought, supervision, towards the authorities and legislative principles, all of these are contained in the politics system that had been practiced at the time of the Prophet Muhammad²⁴. Islam in Pakistan is the majority the same as in Indonesia but in Pakistan it is more complicated because there are two ambivalent concepts about what is called an Islamic state. Among the political elites who in fact represent secular-nationalist groups, they view that the Pakistani state must stand as an Islamic state with a communal, political and national identity that empties its religious content. John L. Esposito asserts that:

"Pakistan must stand as a modern nation-state based on Western legislation with its secular calculations. On the other hand, the majority of the population led by ulama and other Islamic religious figures who represent the interests of Islamic-nationalist groups prefer the establishment of Pakistan by using the constitution, institutions, and daily life based on Islamic law and regulations".²⁵

In solving legal problems, in Indonesia religion is a value that is considered by the state, policy makers and by judges, but it is not implemented in a big way because it takes into account many other positive laws that apply in Indonesia, but legal issues related to religion can definitely be submitted to the Court Religion, while in Pakistan the Islamic Ideology Advisory Council and the Islamic Research Institute are directly involved in handling legal cases such as usury, bank interest, utilization of zakat, family planning programs, Islamic family law and other issues. However, it is difficult for Pakistani Muslims to define Islamic law in Pakistan²⁶. According to modernist groups, Islamic law can be applied if modernization is in line with the developments and needs of the times. Meanwhile, the traditionalist groups demand that the fiqh produced by the previous mujtahids through deduction and derivation from the Qur'an and Hadith must be applied without exception. The failure of the articulation of the Qur'an and Hadith in the context of the state causes a crisis that encourages looting, arson, terrorism and murder²⁷. Meanwhile, in Indonesia the implementation of religious values is very flexible because they are returned to adherents of their respective religions as long as they do not conflict with the constitution and not harm others. In this regard, Ibn Taymiyyah claimed that diversity of thoughts, perspectives, and opinions is essential. There are differences that may be tolerated and differences that cannot be endured. The reality that

²⁴ Waseem, *Patterns of Conflict in Pakistan: Implications for Policy*.

²⁵ Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London: British Institute of International and Comparative Law, 2008).

²⁶ Muslem Muslem, "Penyelenggaraan Pendidikan Agama Islam Di Pakistan," *KALAM* 7, no. 1 (2019): 20-40.

²⁷ Muslem Muslem.

difference is a condition that every individual in society experiences. Efforts are still needed to reduce religious inequalities that might aggravate life²⁸.

In this case the author reveals how the role of religion in the constitution, in a corruption case of world countries shows data that Pakistan which incidentally is an Islamic country still shows high numbers, this is followed by Indonesia which is a country that includes religion in the constitution even in Pancasila, the role of religion in the constitution is the main foundation but does not necessarily make its citizens submit to do good and not avoid bad things. In fact, in discussing the relationship between religion and the state, people often forget that Islam as a religion is not only related to the worship of God. Islam covers all aspects and joints of human life²⁹. Islamic teachings also include the rules governing human relations with other humans called *muamalah*, also includes *hudud*. Islam has laid a basic direction in this matter which can be referred to the Al-Quran and Sunnah. The provisions in the Qur'an and Sunnah must be applied and implemented by humans. Therefore, the Qur'an and Sunnah do not stand alone. In order for the provisions in the Qur'an and Sunnah to be carried out optimally, a strength and power is needed, which is called a state. Ibn Taimiyah also strengthened his argument by stating that there are many religious tasks according to the provisions contained in the Qur'an and Sunnah that cannot be carried out except by the state or government. These tasks include withdrawing zakat, enforcing criminal law for criminal offenders, carrying out jihad, and so on. All of that requires intervention from the government or the state. According to him, without state power that has coercive authority, the position of religion can be in danger, because many religious provisions cannot be implemented. On the other hand, a state without the guidance of revelation and religion can also become a very dangerous state and have the potential to become tyrannical. So, religion and state actually complement each other.

Number	Indonesia	Pakistan
1	Not Islamic country	Islamic country
2	Implementation of religious values is very flexible because they are returned to adherents of their respective religions as long as they do not conflict with the constitution and not harm others	Deduction and derivation from the Qur'an and Hadith must be applied without exception
3	Government is limited by Positive laws	Government is limited by God's laws (the Qur'an and Hadith)
4	Everything based on Positive laws	Everything base on

²⁸ Eri Nurul Fahmi, Endin Mujahidin, and Imas Kania Rahman, "Development of Religious Tolerance of High School Levels," *Edukasi Islami: Jurnal Pendidikan Islam* 10, no. 01 (February 18, 2021): 163, <http://jurnal.staialhidayahbogor.ac.id/index.php/ei/article/view/861>.

²⁹ Fajar Syarif, "Politicization of Religion: Religion in Political Discourse," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 25, no. 2 (December 7, 2017): 443, <http://journal.walisongo.ac.id/index.php/walisongo/article/view/1569>.

5	Facing the problem in implementing democracy	Facing the problem in implementing democracy
6	Pancasila democracy which based on Pancasila	Islamic democracy completely based on the Al-Quran and Sunnah
7	Largest Muslim population in the world	Largest Muslim population in the world
8	The freedom of believers is left to each other, there is no pressure from the state	There are many religious tasks according to the provisions contained in the Qur'an and Sunnah, muamalah also includes hudud
9	High pluralism	Only existence of 2 schools of Islam that contradicting each other, namely Shia and Sunny

Conclusion

The role of religion in the state constitution is very important, this is because religion is part of human rights that need to be guaranteed by the state, besides that religion is a strong main foundation for people in the nation and state so as not to do things out of control because Religion can be a tool of social control. The role of religion in the Pakistani constitution is very large, all sources of law used are from Islam, namely the Koran and Hadith to the opinions of trusted scholars, in other cases the role of religion in the Pakistani constitution makes the implementation of government quite complicated with the existence of 2 schools of Islam that contradicting each other, namely Shia and Sunny, besides that leaders who seem not afraid of religion by taking power and massive corruption of state money are not in accordance with the constitution and the religion of Islam which highly respects the trust of the people, government pathologies continue to emerge in the name of whether or not in the name of religion, the role of religion in the constitution of Pakistan is less effective but it is also not said to have failed this is because other noble Islamic values can be implemented properly while the role of religion in the constitution in Indonesia is not large enough but still collects values. this noble value, this is because Indonesia is a country with high pluralism and democracy, in terms of its implementation the role of religion in the Indonesian state constitution has not been able to prevent bad deeds committed by government leaders, namely with corruption, religion seems to be only a formality in the constitution and less play a role in preventing government pathologies, in the two countries a comparison between Indonesia and Pakistan shows that the role of religion in the constitution is not yet fully a tool of social control and unifying the nation, but the noble values of religion in the constitution can prevent bad deeds of citizens to remain under control, religion is not only placed in the constitution but the main thing needs to be placed in the hearts of their respective adherents.

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