

Secular or Religious State and The Impact on The Acceptance and Resistance of Sharia Perda in Indonesia

Akhmad Khalimy
 Islamic State Institute, Syekh Nurjati Cirebon, Cirebon - Indonesia
 Email : akhalimy@gmail.com

Abstract--This paper wants to know the various views among Indonesian and foreign scholars on the existence of sharia perda in Indonesia. Their various views traced from their works on books, dissertations/thesis, or papers written on the topic of sharia perda from 2000-2020. The following studies will compare paradigms and approaches used on their opinions so that we can understand the conclusion of the views that come from their perspectives. This research is a qualitative research that is descriptive and uses socio-legal analysis, which law unseparated with socio and political contexts. The study concludes that there are two waves of opposite opinion in the recent studies of Sharia Perda in Indonesia. First is the opinion that resists the existence of the Sharia Perda. The other is to accept the existence of the Sharia Perda. Those who see Indonesia as a secular state will resist its existence, and those who see Indonesia as a religious state will accept it

Keywords- sharia perda; secular; religious; State

I. INTRODUCTION

The emergence of sharia perda is a heated debate for academics both in Indonesia and from outside Indonesia. Since Indonesia became an independent state in 1945 and since the omission of Jakarta Charter “seven words,” the adoption of Islamic law has been a contentious issue in formal and informal politics at both the national and sub-national levels.

Sharia perda was starting to flourish after the reformation and developing very quickly in various regions. Based on Article 18 paragraph (7) of 1945 Constitution of Republic of Indonesia, Law No 32 of 2004 concerning Regional Government, which has been amended by Law of No 23 of 2014, which, gave the decentralization of political and fiscal authority, the introduction of free elections, and the overhaul of the party system. Concretely, various reform initiatives shifted considerable political and fiscal authority to the subnational level.

As a consequence, Sharia Perda discourse frequently associated with regional autonomy, which gives an inherent right of self-determination for local government to govern. That Is the right of the region to decide its destiny and take care of its

internal affairs, including the authority to form local regulations, in the Republic Indonesia State System.

Muhtada recorded the dissemination of sharia perda in a vertical from the national level to the province and region or vice versa and horizontally the spread of sharia, from one city/district to another city/district. [1].

According to Al-Barbasy, the discussion of sharia regulations in Indonesia issued four critical debates. They are the debate concerning the Sharia Law with Islamophobia, resistance and acceptance of the Sharia Law, the relationship between the Sharia Law with the ideology of political parties, and the proportional position of the Sharia Law as a product of democracy. [2]

There was a discourse that would remove the regulation, but the resistance to maintain the existence of the regulation was also very strong. This paper will only focus on the resistance and acceptance, between the Proponents and opponents of the Sharia perda, because this theme always ignites the debate between the groups who accept and the groups who resist with various points of view, ranging from legal, social-political, and religious approaches. The various approaches ultimately give a colorful opinion about its existence in Indonesia.

Al-Barbasy’s study, *“Politics Perda Shari’a (Islamic Dialectics and Pancasila in Indonesia),”* found the resistance and the acceptance between proponent and opponents of Sharia Perda. [3] Salim’s work, *“Challenging the Secular State: The Islamization of Law in Modern Indonesia,”* also noticed that attempts to implement sharia (perda) in Indonesia formally have always been marked by a tension between political aspirations of proponents and opponents of sharia. [4]

Interestingly, Al-Barbasy’s study of sharia perda revealed that proponents and acceptants of sharia perda are usually present from the students or Santri group or religious nationalists, but there are also

from nationalist-secular groups. The opponents and resistance of sharia perda is the secular nationalist group, but apparently, there are those of the religious group and the local nationalist. [2]

Many scholars studied perda sharia. Among them, said sharia perda gave negative implications is a study conducted by Fanani, who argued that the introduction of such laws gave negative implications for religious minorities in Indonesia. Shariah perda has caused discrimination against religious minorities. [5] Also, Jati, who said that the implementation of sharia perda and regional autonomy, is only used for reminders of historical romanticism, only governing society but not governing leaders. [6]

The study by Purnomo analyzes the formulation and typology of Islamic law through local regulations proposed by the political elites that sharia perda is an expression Religiosity of the scholars and community leaders who want the application of Islamic Sharia. [7]

Azmi elaborated on the framing of sharia law and sharia perda in Indonesia. He pointed out that Indonesia's leading English language newspaper The Jakarta Post (JP) is more about voicing and covering figures who are counter to Sharia regulations. In JP's viewpoint, Sharia law is unsuitable for the secular constitution, discriminatory, does not respect pluralism. Moreover, Sharia law suppresses minority freedom, deals with the private sphere, only targets women and lower classes but does not reach the elite and upper classes, does not help improve moral values, and as a form of Rigid interpretation of the Qur'an. [8]

The study of perda sharia in the context of politics, conducted by Buehler [9], found that the democratization of politics in Muslim-majority countries around the world, and in Indonesia, has increased pressure on elected politicians to adopt Islamic laws. The bulk of sharia regulations arose after the political opening in 1998. Sharia regulations occurred almost exclusively at the local level. Districts adopted most sharia rules but almost none at the provincial and national levels. Muhtada [1], who said the birth of these Islamic nuances, is a reflection of regional autonomy and the fruit of democracy that cannot be avoided.

The study, by Salim, has hypothesized that the formal implementation of sharia in Indonesia is dissonant, in the sense of continuity between tensions in meanings and direct contradictions in

terms. He has identified a wide range of examples of this dissonance at the constitutional, political ideology, and subordinate regulations level. He also noticed that attempts to implement sharia (perda) in Indonesia formally have always been marked by a tension between proponents and opponents of sharia and by resistance from the secular state. [4]

Among the study that accepted and has positive views on sharia, perda is the research of al-Barbasy.

Which he said [2]:

The creation context of sharia perda is very democratic through the official agencies in the Local Government. If it is said to contradict the Pancasila, the Sharia Perda is the subtle and substantive interpretation of Pancasila and the Constitution 1945, which explicitly exists in the first Pancasila and the Constitution 45 article 29 paragraph 1 stating that the country is based on one supreme God. The resistance of the Sharia is a form of Islamophobia, an attitude of hatred and fear of all things that nuanced Islam.

Al-Barbasy's dissertation [3] stated that Pancasila was a meeting point. Pancasila places Indonesia as not a secular state and not a religious state, but religion involved a very central position. Pancasila illustrated in the first precept, the Almighty God, and in Article 29 of the 1945 Constitution on Freedom of Religion, which states (1) The State is based on the Almighty God. (2) The State guarantees the independence of each population to embrace their respective religions and to worship according to their religion and belief.

From the above explanation, identified there are two major views about sharia perda in Indonesia. Those who see the negative side and resisted its existence. Moreover, those who see from the positive side of sharia perda and accepted it.

II. PROBLEMS

From the above introduction, we found two opposite views on the same object "sharia perda" in Indonesia. First is the opinion that resists the existence of the Sharia Perda. The other is to accept the existence of the Sharia Perda. The problem is, why did two opposite views occur on the existence of sharia perda in Indonesia? How could Indonesia with Pancasila as a national principle, not a secular state and not a religious State deal with it?

III. RESEARCH METHOD

This research is qualitative comparative research that is descriptive and uses socio-legal analysis, which law unseparated with socio and political context.

Quantitative Comparative analysis (QCA) generally starts with a specific set of cases in mind—cases thought to be (based on reason and evidence)

comparable along with specific characteristics, the selection of which is guided by a theoretical framework. The set of cases must be coherent. The logic of comparative analysis rests on the examination of patterns of similarities and differences across conditions in the cases. [10]

This study will identify configurations of causal conditions (or factors) that are sufficient for the occurrence of an outcome. Because several different combinations of factors may each be causally sufficient, the method further allows for [examining] multiple paths to the same outcome (which is sometimes called multiple causations)".

In QCA, each case is viewed as a combination of causal conditions linked to a particular outcome. Conditions can be selected in a variety of ways, including using existing theories or based on having investigated several cases. [10]

Agreements and disagreements of researchers on the study of sharia perda will be discussed. Their views and attitudes on dealing with Indonesia state as a secular state, religious State, or Pancasila state are a determinant factor for accepting or resisting the sharia perda. The comparative approach is the act of comparing two or more things to discover something about one or all of the things being compared.

IV. DISCUSSION

In the case of the discussion of Sharia perda, there are three divided aspirations among Muslims regarding the Sharia Law.

Firstly, proponents groups who want to make Islam an ideology that manifested in the form of the implementation of Islamic law for the state.

Second, groups reject the formalization of Islam in their life but support only positive law for the implementation of religious, moral ethics, or religious ethics.

Three, the groups that support the formalization of Islamic law in the state life only for private law, but for others, it is enough to make Islam as a source of moral ethics for the development of national law.

According to Abdillah, the third type is more realistic in the context of Indonesian because it can accept democracy and pluralism but, on the other hand, make Islam as a way of life to accommodate Islamic law even though it formalized only a part of Islamic teachings. [11]

The second and third groups above look very similar. The similarities are the same as allowing the use of positive laws taken and based on religious

values. Only the second group rejects the formalization of Islamic law unless this law enters into positive law. The third group approves the formalization of Islamic law but only for private law, but Islamic values can be the source of the development of national law.

There are at least five types of countries about the constitutional recognition of state on religion. The first is states that proclaim themselves as 'religious states' or acknowledge state religion such as; Saudi Arabia and Yemen for Islam, Laos, India for Hinduism, and Cambodia for Buddhism, the Vatican for Catholics. India for Hinduism. British for Anglicanism.

The second is states that have no constitutional declaration about the state religion, such as Indonesia, Srilanka, and Switzerland.

The third is states that acknowledge themselves to be secular. Examples of this kind of state are France, Singapore, and Turkey.

The Fourth, states that oppose religious institution and influence in all aspects of public and political life, including the involvement of religion in everyday life of the citizen like china, Cuba, Vietnam, and North Korea.

Moreover, the relationship Pattern between religion and State divided into three forms, namely the integration of between religion and state, intersectional or the intersection between religion and state, and secularism or separation between religion and state. [12]

The first type proposes an integration and a lasting relationship of religion and State, in which State is both a religious and political institution at once.

The second form is a tacit separateness and differentiates between religion and state institutions and views them as being in mutual symbiosis. The State needs religion to progress, while religion needs the State because religion will not develop without the support of the State.

The third outlook envisages a separation between religion and State. The third category is a total separateness and rejects any efforts of religion to influence the State since both religions and States have their respective authority.

In the case of Indonesia, the tension in the relationship between Islam and the State has been evident since Indonesia's independence in August 1945, and this tension stems from the dilemma of a dual state identity as Indonesia defines itself as neither theocratic nor secular. This dualism makes

the role of Islam in Indonesian politics and foreign policy a complex one. [13]

The interesting thing is that the 1945 Constitution does not emphasize that Indonesia is a religious state or relies on certain religions or claims to be a secular state. Many experts believe that Indonesia is a religious nation-state. Furthermore, Indonesia, based on the Pancasila written in the preamble of the 1945 Constitution.

Indonesia is not a religious country and not a secular state. Indonesia has chosen the form of Religious Nation-State, the country of nationality, which is based on Pancasila. Pancasila country is not a secular state because the secular State separates the affairs of State and religious affairs [14]. As it is described in article 29 of constitution 1945 paragraph 1, it is clearly seen there should be no secularism in the national legal system, including the creation/establishment of law, law enforcement, and education or national law science. [15]

The concept of the Pancasila legal state is the main character and distinguishes the Indonesian legal system from other legal systems. The characteristic of the Pancasila state law is a Religious Nation-State. By looking at the relationship between the state and religion, the concept of the rule of law Pancasila does not embrace secularism, but it is also not a religious state as in theocracy and in the concept of Islamic democracy. The concept of the Pancasila legal state which is a concept of a godly state. Godliness is in the sense that the life of the nation and the state of Indonesia is based on trust in the Almighty God, thus opening freedom for citizens to embrace religion and belief in accordance with their respective beliefs:[16]

A. The Secular State and Impact on The Sharia Perda

The term secular, from the Latin *saeculum*, conveys meaning with a marked dual connotation of time and location; the time is referring to the 'now' or 'present' sense of it, and the location to the 'world' or 'worldly' sense of it. Thus Saeculum means 'this age' or 'the present time,' and this age or the present time refers to events in this world, and it also then means 'contemporary events.' [17]

Peter L Berger: Secularization means the process by which sectors of society and culture are removed from the domination of religious institutions and symbols[18].

Nevertheless, al-Attas [17], also said that Secularization encompasses not only the political and social aspects of life but also inevitably the

cultural, for it denotes "the disappearance of religious determination of the symbols of cultural integration." An-Naim [19], who proposed the public role of Sharia as a private and personal domain, said that a secular state is a state that is neutral regarding religious doctrine. The state must not be allowed to claim the authority of implementing Sharia as such.

With a secular point of view, Sharia enforcement cannot be rectified as state law under any conditions. even though it does not mean the exclusion of religion from the formulation of public policy and legislation or public life in general. So all citizens can live by their belief as a matter of religious obligation, not as an outcome of coercion by state.

A secular standpoint insisted on the religious neutrality of the state as a necessary condition for all society to comply with their religious obligations. Religious compliance must be completely voluntary.

This view, "the religious neutrality of the state," is a paradigm and pattern of the secular state whereby state institutions neither favor nor disfavor any religious doctrine or principle. The main objectives of the secular state are neutral regarding religious doctrine. Sharia cannot be forced by state institutions officials. The secular state meant that religious institutions and symbols discarded form public life. The secular state meant the disappearance of religious determination of the symbols of cultural integration from the national and state life.

In secular Turkey, the state banned its original Arabic version and enforced the recitation of the Turkish language of the call to prayer (azan) in 1932. The use of Islamic headscarves in state institutions, as well as universities, banned, and had been framed by several court rulings as a statement against the constitutional principle of secularism[20]. Alternatively, a secular state like Singapore, which stated in its constitution Article 15(4): a person's freedom of religion can be restricted by a general law relating to public order, public health or morality.

With a perspective of a secular mind, it is not surprising if bearers and interpreters of the Indonesian constitution as a secular state will resist and throw away the existence of sharia regulations and things that smell of religion in the life of the nation and state. Because sharia regulations originating from Islamic religious law have no place in a secular state.

When classifying that sharia (perda) law in Indonesia as challenging the secular state, it would lead to the conclusion that the Islamization of laws (including perda Syariah) under the frame of national law or religious autonomy remains legally and politically dissonant. The formalization of sharia perda would restrict the list of specific liberties mentioned in Article 28 on Human Rights in the constitution. Sharia (perda) implementation would restrict the religious freedom of individuals, and Indonesian nationals would be treated not as autonomous individual citizens but as members of a religious community.

Suggesting sharia perda with a secular state perspective would lead to an understanding that sharia would alienate and coerce citizens as they do not embrace the official or dominant religious interpretation and would foster political divisiveness among citizens of different religious affiliations. Alienation and coerciveness of citizens on sharia perda contradict the constitutional principle of equal citizenship in Article 28I (2) mandates that all citizens have equal rights regardless of their ethnicity, gender, or religion.

B. The Religious State and The Impact on Perda Sharia

The word “religious” is derived from the word religion. Religion means the service and worship of God or the supernatural, devotion to religious faith, a personal set or institutionalized system of religious beliefs, attitudes, and practices. Religious, an adjective word, means relating or devoted to an acknowledged ultimate reality or deity, of or relating to religious beliefs or observances. [21]

Berger wrote that religion is the human enterprise by which a sacred cosmos is established. Put differently, religion is cosmization in a sacred mode [18]. Clifford Geertz wrote: "A religion is a system of symbols which acts to establish powerful, pervasive and long-lasting moods and motivations in men by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic. [22]

However, the meaning of religion is not the same as the concept of religion as interpreted and understood throughout Western religious history, as the “religion” meaning of “din” in Islam. Which will cause the different concepts of “religion” in Islam? As stated by Al-Attas:

When we speak of Islam and refer to it in English as ‘religion,’ we mean and understand by it

the din. The word din derived from the Arabic root. “Din” has many primary meanings which, although seemingly contrary to one another, are yet all conceptually interconnected so that the ultimate meaning derived from them all presents itself as a clarified unity of the whole.

According to Al-Attas, the primary meanings of the term din “religion” is *indebtedness, submissiveness, judicious power, and natural inclination or tendency*. Indebtedness meant that man is indebted to God, his Creator, and Provider, for bringing him into existence and maintaining him in his existence. Submission refers to conscious and willing submission and realization of what is inherent in one’s true nature.

Judicious power meant God’s government of the realm of Creation. Man in Islam who acknowledges God as Lord (Rabb), has to mean also to acknowledge His Absolute King (Malik), Possessor and Owner (Sahib), Ruler, Governor, Master, Creator, Cherisher, Sustainer. All human souls have the same status with their Lord; that of being subject, possessed, owned, ruled, governed enslaved, created, cherished, and sustained. Natural inclination or tendency (fitrah) that man’s obligation to serve God is kit by him as normal because it comes as a natural inclination on the man’s part to do so. This natural tendency in the man to serve and worship God.

From the definition of religion above, we can derive meaning a religious state as a state which acknowledged the ultimate reality of God, formulating conceptions of a general order with the guidance of God, consciousness, and willingness of submission and realization of what is inherent in one’s true nature. The religious state should base all conceptions of a general order with the guidance of God.

The religious state has a very tiny similarity with a theocracy state system that upholds and guided by divine principles, which play a vital role in the general order of the state. The clearest difference is that a theocracy is an absolute form of identity in the State Religious system. In the theocracy system, the state leaders became spiritual as well as religious leaders.

Islam has not acknowledged the ideals of separation of religion and government and of religious pluralism that have now become common in Europe, North America, and other parts of the world. Islam has presented itself as a total way of life. [23]

However, in the religious state, the degree and nature of state backing for religion as a state religion or religious state can vary. A religious state in a rigid meaning would be the state that proclaims as a religious state like the Kingdom of Saudi Arabia, Uni Emirates Arab, Vatican City. A state religion in another kind is a state which enacted a religion as a formal religion for the state, like Malaysia. Malaysia enacted Islam the religion of the Federation, but other religions may be practiced in peace in any part of the Federation. Cambodia, Laos, and Myanmar declared in their Constitution that Buddhism as the official religion of the country or holds a special status. Alternatively, India, even which claims a secular democratic republic, Hinduism holds special status and has certain privileges.

The variation can range from a mere endorsement, with or without financial support, with freedom for other faiths to practice, to prohibit any competing religious body from operating, and to persecuting the followers of other sects.

Indonesia is not a religious state in a rigid meaning and not enacted a religion as a formal religion of the state. The source of national law is the absorption of some of the noble values of religion, culture, and customs that grow in the plural of Indonesian society.

A “religious state,” in Indonesia would be in the sense of being a state that is concerned with the implementation and development of religious values, without having to become a “theocratic” state, which is constitutionally based on certain formal religious institutions. [24]

Belief in the one and only God is the fundamental message of Pancasila, the opening of the Constitution, and Article 29 of the 1945 Constitution. The teachings of the divine should be present and be considered in carrying out the life of the nation and state. Belief in one God should be the basis of action and every action plan in the life of the nation and state.

Article 29, Paragraph 1 of the 1945 Constitution, constitutes the word "The country is based on one supreme God" must be understood that the trust of the Indonesian people in God Almighty, the state seeks to "present" God in the life of the state and society. The state is obliged to organize the government based on the teachings of God. The State is based on God The Almighty at the same time negated the forms of state that were held by denying God, like an atheist state or country secular, with all its variants.

As it is described in the preamble of constitution and article 29 of constitution 1945 paragraphs 1 and 2, there should be no secularism in the national legal system, including the creation/establishment of law, law enforcement, and education or national law science.

Indonesia has chosen the form of Religious Nation-State or Pancasila state. The practiced national law in Indonesia is the absorption of some of the noble values of religion, culture, and customs that grow in the plural of Indonesian society. Of course, the most important source of national law is derived from religious values.

So the acceptance of sharia perda has a very legal basis in Pancasila and Constitution 1945. The acceptance of Sharia Perda in the name of Indonesia as a religious state and religious nation-state is the substantive and subtle interpretation of Pancasila and the Constitution 1945, which explicitly exists in the first Pancasila and the Constitution 45 article 29 paragraph 1 stating that The country is based on one supreme God. Indonesia is the Pancasila state; the process will not lead to a secular state and not a religious state in a rigid meaning. With these legal bases, sharia perda is in accordance with and rests with the Pancasila and the 1945 Constitution. The First Precept Pancasila explicitly mentions.

C. The Course of Discrepancy: Acceptance And Resistance

Comparing both views above, we discovered that the differences that cause acceptance and resistance of sharia regulations in Indonesia traced are due to:

1. The Discrepancy in Taking A Legal Basis in The Constitution.

Sharia perda acceptants based their argument on the first precepts of Pancasila, “Belief in the one and only God.” Article 29 of constitution paragraphs 1 and 2. Paragraph 1 read: “The country is based on one supreme God. Article 29 paragraph 2 said: “State guarantees the independence of each population to embrace their respective religions and to worship in line with his religion and beliefs.

Moreover, sharia perda resistants based their argument on constitution about human rights, article 28 E (2) of the 1945 constitution: everyone has the right “to possess conviction and beliefs, and to express his or her thoughts attitudes in accordance with his or her conscience.” Article 28 I (2) “Everyone is free from discriminatory treatment on any grounds and has the right to get protection against discriminatory treatment.

2. The discrepancy of application and interpretation of Pancasila, Articles 28, 29 of 1945 Constitution and sharia perda.

The acceptance of sharia perda interpreted that Sharia Perda is the interpretation of substantive and subtle of Pancasila and the Constitution 1945, which explicitly exists in the first Pancasila and the Constitution 45 article 29 paragraph 1 stating that the country is based on the Almighty God.

The resistance of sharia perda interpreted that sharia perda restrained religious freedom rights. The implementation and formalization of sharia perda would restrict the religious freedom of individuals in the name of communal religious obligations and freedom of the people who adhere to minority religions in carrying out their religious services. It encourages political divisions between citizens, restricts the freedom of society in all respects and reflects the injustice.

The acceptant of sharia perda would prefer to apply Pancasila and article 29 (1 and 2) of the constitution as a legal basis. In contrast, the resistance of sharia perda prefers to apply article 28 E (2) and I (2) of the constitution as a legal basis.

Actually, there is no contradiction between Pancasila and the 1945 Constitution Article 29 with Article 28 E (2) and I (2), even complementing and reinforcing each other. The use, application, and interpretation of these articles should be practiced fairly and comprehensively.

For the Muslim, the reason for resistance to secularism is the argument that Secularization is an alien concept. The contrasts history and experience between Christian and Muslim; Christians taught both by precept and practice to distinguish between God and Caesar and the different duties owed by each. "Give to Caesar what belongs to Caesar, and give to God what belongs to God."

Muslims received no such instruction. Islamic teachings have enlarged in all spheres of public life, such as the market place, the university, the court. [20]

The common understanding among people, no doubt indoctrinated by Western notions. That a secular state is a state that is not governed by the "ulama/Muslim scholar", or whose legal system is not established upon the revealed law, in other words, it is not a theocratic state. However, contrasting the secular State with the theocratic state is not correct at all, since Islam does not involve itself in the dichotomy between the sacred and the

profane. So, contrasting the theocratic State with the secular State is irrelevant.

Since seven words, "the obligation to apply Sharia for its adherents," were omitted from the Jakarta Charter of 1945, Pancasila is a final agreement between the founding fathers.

Pancasila is the national wisdom/National genius which contains the three pillars of the God (religious), the Pillars of humanity (humanistic), and the pillar of society (democratic, social, and societal justice). With the divine pillar means in the foundation of Pancasila contained wisdom/genius of religion. [25]

Pancasila state is neither wholly theocratic nor wholly secular. The Pancasila state will lead neither a secular state nor a theocratic state. Indonesia did not choose Islam as the basis of the country, but the basis of the country is Pancasila. However, incorporated elements of Sharia inspired by Islamic teachings, which is the Government's response to the demands of the majority of society is things that are natural and democratic.

It is very premature to have such an allegation that sharia perda is not the ultimate purpose but short term purpose to Islamize the state of Indonesia as most shari'a regulations were adopted at the subnational level. It seems very exaggerated insofar if the recent initiatives for the enforcement of Sharia perda, which implemented through the Pancasila-based state and the Unitary State of the Republic of Indonesia, assumed as a signal to transform it into an Islamic state.

Mentioning the word "The country is based on one supreme God" in Article 29, paragraph 1 must be understood that the State is tasked with "presenting" God in the life of the State and society. With this affirmation, the State is obliged to synchronize the government based on the teachings of God. The State-Based on the Almighty God negated forms of the State held by denying God, such as an atheist or secular State, with all its variants. The existence of article 29 reinforces the basis that the Indonesian state is religious, recognizing the trust of the Indonesian people in an almighty God. So, Indonesia is not a secular country that denies religion or separates religion from the state and separates religion in the lives of its people.

With Article 29 (2) provides that "the state guarantees all persons the freedom of worship, each according to his/her own religion or belief," the state, with all its instruments of power, must provide and help with the smooth implementation of teachings of any religion in Indonesia. For the majority of Muslims, the State must ensure that

religious adherents can worship and practice religious teachings.

Rejecting the Sharia Regional Regulation straddles not only democracy but also denounces Pancasila and the 1945 Constitution. The First Precept Pancasila firmly mentions the Almighty God. The fundamental message of the first precept is the suitability of character, the essence of State with the essence of God in the sense of conformity of cause and effect. So in all aspects of state administration, Indonesia must be run according to the nature of values derived from God (religious values). Although Indonesia is not a religious state today, religion has been an important aspect in the establishment of the country.

The groups who resisted Sharia perda removed the fact about the importance of the religious role in Indonesia that religion is still and continues to play an essential role in the public and correct setting of society as well as high religious expression in Indonesian society.

Pancasila and religion do not necessarily contradict Pancasila; moreover, it is not only to impair and conform with the religion. Pancasila does not reject religion, and even with the religion, Pancasila will be rigid and robust as the first article of Pancasila. The practice of religious teachings will strengthen the life of Pancasila.

Secularisation or strict separation between state and religions can not be enforced in Indonesia. The Indonesian public does not see religion as an individual problem or something private; even religion can freely to be practiced and to organize public life and social morality of the community.

The opposition to the Sharia Perda besides reflects the stoutness in understanding the Pancasila and the Law 45; it also becomes a form of incomprehension in understanding mutual relations and symbiotic mutualism between Islam and the country. The birth of Sharia Perda is a manifestation of the symbiotic relationship of Islamic mutualism and the typical state of Indonesia.

V. CONCLUSION

The causes of both two opposite views on the existence of sharia perda in Indonesia is the discrepancy in taking a legal basis in the constitution. Sharia perda acceptants based their argument on the first precepts of Pancasila, "Belief in the one and only God." And article 29 of constitution paragraphs 1 and 2. This base leads to an interpretation of Indonesia as a religious state. Moreover, sharia perda resistants based their

argument on the constitution about human rights, article 28 E (2), and I (2) of the 1945 constitution. These legal bases drove to an interpretation of Indonesia as a secular state. The discrepancy also appears in the application and interpretation of articles 1945 Constitution, between Pancasila, Articles 28, 29 of the 1945 Constitution, and sharia perda.

Since seven words, "the obligation to apply Sharia for its adherents," were omitted from the Jakarta Charter of 1945, So, Pancasila is a final agreement between the founding fathers. Pancasila, as a national principle, was neither wholly theocratic nor wholly secular. The First Precept Pancasila firmly mentions the Almighty God. So it does not necessarily have to oppose religious truth, to divest the nature of spiritual meaning, and to deny religious values and virtues in politics and human affairs. Sharia perda, which implemented through Pancasila-based state and Unitary State of the Republic of Indonesia at the subnational level, then Pancasila would uphold and foster religious values in the general affairs of state. Sharia perda would be the subtle and substantive interpretation of Pancasila.

ACKNOWLEDGEMENT

Successfully completion of any type of paper requires help from some person for preparing this report. They are a very helpful person with a great effort of spirit and motivation.

I convey sincere gratitude to the rector of IAIN Syekh Nurjati and dean of the faculty of sharia and Islamic economics IAIN Syekh Nurjati Cirebon and Director of PDIH Undip Semarang for encouraging of completion of doctorate programme at PDIH Undip Semarang.

Thanks, colleagues, to give clear perspectives on the topic.

REFERENCES

- [1] D. Muhtada, "Perda Syariah di Indonesia: Penyebaran, Problem, dan Tantangannya (Disampaikan dalam Orasi Ilmiah dalam rangka Dies Natalis VII Fakultas Hukum Universitas Negeri Semarang pada tanggal 4 Desember 2014 di Semarang)", Semarang, 2014.
- [2] M. M. Al-Barbasy, "Islam dan Negara: Perdebatan dalam Pembuatan Perda Syariat di Kota", *AFKARUNA*, Vol. XII No. 2, 2016.
- [3] M. M. Al-Barbasy, *Politik Perda Syariat (Dialektika Islam dan Pancasila di Indonesia*, 1st ed., Yogyakarta: Suara Muhammadiyah, 2018.
- [4] A. Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia*, Honolulu: University of Hawai'i

- Press, 2008.
- [5] A. F. Fanani, "Shari'ah By Laws In Indonesia and Their Implications For Religious Minorities", J. Indones. Islam Publ. by Institute Study Religion and Society (LSAS) Postgrad. Progr. (PPs), State Institute for Islamic Studies Sunan Ampel Surabaya - Indonesia, Vol. 05 No. 01, 2011.
- [6] W. Raharjo Jati, "Permasalahan Implementasi Perda Syariah Dalam Otonomi Daerah", *Al-MANAHID*, Vol. VII No. 2, 2018.
- [7] A. Purnomo, "Politik Hukum Elite Politik Kabupaten Pamekasan Tentang Perda Syari'at", *ISTINBATH*, Vol. 13 No. 1, pp. 1–19, 2014.
- [8] A. Azmi, "Konstruksi Realitas Pemberlakuan Perda Syariah Oleh Koran The Jakarta Post", *HUMANIS*, Vol. XI No. 1, 2012.
- [9] M. Buehler, *The Politics of Shari'a Law*, 1st ed., Cambridge: Cambridge University Press, 2016.
- [10] N. K. Denzin and Y. S. Lincoln, *The Sage Handbook of Qualitative Research*, 5th ed., Washington: SAGE Publication, Inc, 2018.
- [11] M. Abdillah, *Formalisasi Syariat Islam di Indonesia: Sebuah Pergulatan yang tak Pernah Tuntas*, Jakarta: Renaisan, 2005.
- [12] M. Abdillah, "Hubungan Agama dan Negara dalam Konteks Modernisasi Politik di Era Reformasi," *AHKAM J. Ilmu Syariah*, Vol. 13 No. 2, pp. 247–258, 2013.
- [13] R. Sukma, *Islam in Indonesian Foreign Policy*, 1st ed., London: Taylor & Francis, 2003.
- [14] M. Mahfud MD, "Islam, Lingkungan Budaya, dan Hukum dalam Perspektif Ketatanegaraan Indonesia", *KARSA J. Sos. dan Budaya Keisl.*, Vol. 24 No. 1, p. 1, 2016.
- [15] B. N. Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum di Indonesia)*, Revisi. Semarang: Badan Penerbit Universitas Diponegoro Semarang, 2017.
- [16] A. Hidayat, *Perlindungan Hak Sosial Ekonomi Dalam Konstitusi Berketuhanan*, Bali, 2019.
- [17] S. M. N. Al-Attas, *Islam and Secularism*, 2nd ed., Kuala Lumpur: International Institute of Islamic Thought (ISTAC), 1993.
- [18] P. L. Berger, *The Sacred Canopy: Elements of a Sociological Theory Of Religion*, 1st ed., New York: Open Road Media, 2011.
- [19] A. A. An-Naim, *Islam and the Negotiating the Future of Shari'a*, 1st ed., Cambridge, United Kingdom: Harvard University Press, 2008.
- [20] U. Azak, *Islam and Secularism in Turkey*, 1st ed., New York: I.B. Tauris & Co. Ltd, 2010.
- [21] J. M. Morse, *The Merriam Webster Dictionary*, 11th ed., Springfield Massachusetts, 2004.
- [22] R. N. Bellah, *Beyond Belief: Essays on Religion in a Post-Traditional World*, 1st ed., California: Harper & Row New York, 1991.
- [23] R. S. Ellwood and G. D. Alles, *The Encyclopedia of World Religions*, Revised Edition. 2007.
- [24] B. Effendy, *Islam dan Negara: Transformasi Gagasan dan Praktik Politik Islam di Indonesia*, 2nd ed., Jakarta: Yayasan Wakaf Paramadina, 2011.
- [25] B. N. Arief, *Pendekatan Keilmuan dan Pendekatan Religious; Dalam Rangka Optimalisasi dan Reformasi Penegakan Hukum (Pidana) di Indonesia*, 4th ed., Semarang: Badan Penerbit Universitas Diponegoro Semarang, 2018.