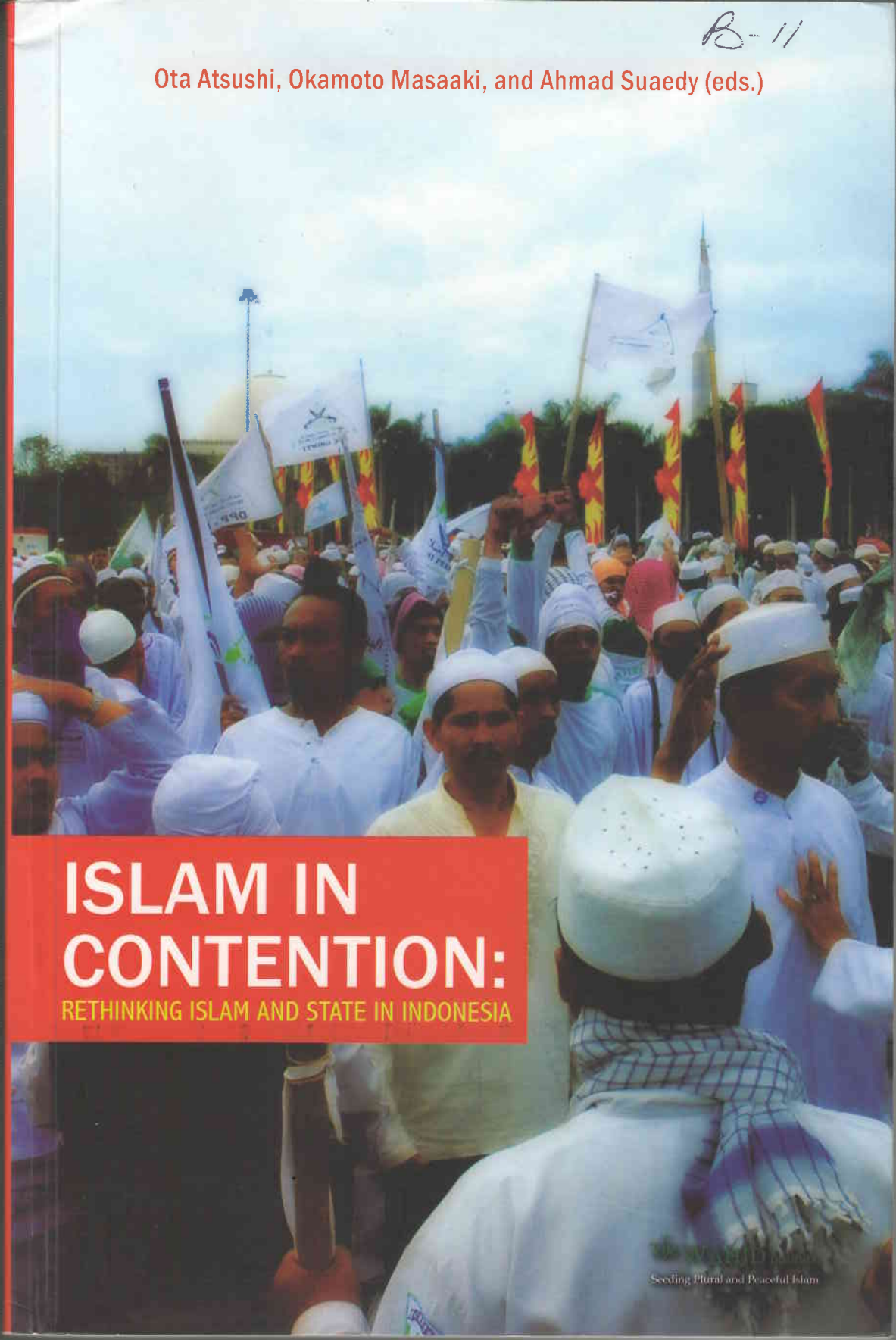


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Ota Atsushi, Okamoto Masaaki, and Ahmad Suaedy (eds.)



# ISLAM IN CONTENTION:

RETHINKING ISLAM AND STATE IN INDONESIA

# ISLAM IN CONTENTION:

Rethinking Islam and State in Indonesia

Edited by:  
**Ota Atsushi**  
**Okamoto Masaaki**  
**Ahmad Suaedy**

The WAHID Institute  
Seeding Plural and Peaceful Islam



Center for Southeast  
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## PANCASILA AND THE *PERDA SYARI'AH* DEBATES IN THE POST-SUHARTO ERA: TOWARD A NEW POLITICAL CONSENSUS \*

Abubakar Eby Hara

The debate over the formation of an Islamic state in Indonesia shows a new political dynamic following the fall of the Suharto regime. Debate over an Islamic state was banned under the Suharto regime,<sup>1</sup> but this debate has been revived and, broadly speaking, has divided into three camps. First are those in the radical wing who are for the implementation of *syari'ah*, or pro-*syari'ah* groups. Second are the moderate Muslims against the implementation of *syari'ah*,

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\* I would like to express my sincere thanks to Grayson J. Lloyd for his very helpful detailed analysis of my paper. I thank also to Masaaki Okamoto, Jun Honna, Dias Pradadimara, Heru Susetyo, Atsushi Ota, and anonymous reviewers for their comments on drafts of this paper, and to the Center for Southeast Asian Studies (CSEAS), Kyoto University, Japan, for funding and hosting this research.

<sup>1</sup> In Indonesia, the debate over *syari'ah* Islam was closed during the Suharto years. The government campaigned and enforced state ideology based on Pancasila in many aspects of social, educational, and political institutions, and claimed that the government was the sole and rightful interpreter of the Pancasila ideology. No one could contest its interpretation. However, since the fall of Suharto, public space has opened up, thus allowing civil society elements to participate in discussing public issues. The post-Suharto government is in retreat and only monitors the debates. President Suharto's interpretation and manipulation of Pancasila has been highly discredited among civil society activists. Almost all New Order interpretations of Pancasila, including "*Pedoman Penghayatan dan Pengamalan Pancasila-P4* [the Guideline of Understanding and Implementation of Pancasila]," and its training courses have been forgotten and are no longer in use in social and educational institutions.

(in this paper both groups will be referred to respectively as pro- and anti-syari'ah), and third are an assortment of secular nationalists. Contrary to the perception that such a debate may jeopardize national integration and harmony and lead the country into political instability—as was commonly assumed during President Suharto's New Order regime—the newly emerging democratic system in Indonesia has not only provided space to express a wide variety of views, but has also expanded the possibilities to arrive at new consensus and compromises.

This paper attempts to examine further how a new political consensus is possible in Indonesia. In general, it can be seen that the pro-syari'ah group's campaigns gained little support at the national level, but they have received support in some districts and local governments. The pro-syari'ah actors have switched objectives, from promoting an Islamic state at the national level to supporting a specific and limited application and definition of syari'ah called *perda syari'ah* (*peraturan daerah syari'ah* or syari'ah bylaws) at the provincial and district levels.<sup>2</sup> Civil society participation in the debate has opened these regulations to scrutiny by many more people, and this has forced the pro-syari'ah groups to find more pragmatic than dogmatic justifications to support their position. The debates over *perda syari'ah* reveal how the positions of actors involved in the debate have changed following an intensive exchange of words in the media and interactions between them in the political arena. Supporters of *perda syari'ah* have modified some of their claims and objectives, so that *perda syari'ah* may be seen as more acceptable in the context of the Pancasila state.<sup>3</sup>

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<sup>2</sup> Pro-syari'ah groups have claimed syari'ah regulation as being extracted from Islamic teachings. In some cases, however, some of the teachings have actually been socialized for a long time and become parts of social norms in society. Examples of *perda syari'ah* include the prevention, handling and elimination of immoral acts; obligatory Qur'an reading proficiency for students and marrying couples; the requirement to wear Muslim dress or requirement of Muslim women to cover their heads and maintain modesty in appearance; and other regulations.

<sup>3</sup> Pancasila contains five principles: belief in one supreme God or monotheism, a just and civilized humanity, the unity of Indonesia, democracy guided by consensus arising out of deliberations amongst representatives, and social justice for all people of Indonesia.



This paper is divided into four parts. First, it elaborates the position of Pancasila in Indonesia in the context of the perda syari'ah debates. Second, it shows the reemergence of pro-syari'ah groups in Indonesian politics. Third, it examines the arguments of radical Muslims supporting the implementation of syari'ah and the challenges from the moderate Muslims and nationalist secular groups. Fourth, it looks at the government positions in the debate and the moderation of pro-syari'ah groups' position in the debates.

### PANCASILA IN THE CONTEXT OF THE PERDA SYARI'AH DEBATES

So far there are no comprehensive discussions of Perda syari'ah. In a recent book titled *Shari'ah and Politics in Modern Indonesia*, for example, perda syari'ah received very little attention and only then in the epilogue [Salim 2003: 222-224]. Other writings are limited to unpublished papers written for seminars. A paper by Syafii Anwar [2006], for instance, noted that the adoption of syari'ah bylaws was a new challenge for Indonesia, although the paper does not explain how these bylaws came about or the nature of the debates over the issue. A more detail description was given by Siti Musdah Mulia [2006]. But she focused in particular on how the bylaws have discriminated against women and how women have been objectified under these laws. Katjasungkana also wrote about perda syari'ah from a legal perspective, but like Mulia she concentrated on gender bias in the bylaws. Another article written by Ahmad Suaedy [2006] focused on the usefulness of the syari'ah bylaws for society, but his article did not elaborate further about whether it was possible for Indonesia to apply syari'ah bylaws. A fieldwork study was conducted by the women's organization Rahima on the adoption of syari'ah bylaws in Cianjur, Banten, Garut, and Tasikmalaya in West Java in 2004 [Kusumaningtyas 2004]. The results of this fieldwork provide useful resources for further studies despite the fact that it was limited to West Java and by the fact that it focused on the absence of women in the making of perda syari'ah.

This lack of attention needs to be overcome given that the

study of perda syari'ah is very significant in the current democratic context in Indonesia. It is in some respects the product of a new dynamic in Indonesian politics after the fall of Suharto in which people are now allowed to participate in the public discussion of many issues. Perda syari'ah has created problems in some areas and threatened social cohesion and national integration. As will be discussed, it created confusion not only within the political elites but also among the society where the syari'ah is implemented. In the end, government and those involved in the debates seem to have achieved a certain consensus about how to define and implement syari'ah in society.

Before looking at the recent emergence of pro-syari'ah groups and their efforts to include syari'ah in the new political system, it is important to understand Indonesia's official state ideology, Pancasila (Five Principles), in the context of the syari'ah debate. Debate on Pancasila fell silent for several years after the fall of the Suharto regime, especially because of the enigma created by President Suharto's manipulation of its meaning. However, Indonesia's state ideology, Pancasila, became the central point of these debates. It is still not always clear what Indonesians mean by Pancasila, but, as a starting point, we may say that people believe in Pancasila as the ideological basis for the state. When asked about what kind of state Indonesia is, people will say that it is a "Pancasila state." In other words, they believe that the five principles of Pancasila contain everything they might need, although their interpretations of the details of the Pancasila concept vary widely and they are quite unsure how the principles have been implemented.

To reach a common understanding, scholars, policy makers, and other stakeholders have debated Pancasila since independence in 1945. Instead of upholding Pancasila during the formation of the Indonesian state in 1945-1959, some Muslim groups and political parties attempted to impose Islam as the official state ideology. This started when Muslim leaders such as Agus Salim, Wahid Hasyim, Sukiman, Ki Bagus Hadikusumo, Kahar Muzakkir, and others initially agreed upon the *Piagam Jakarta* (Jakarta Charter) on 22 June 1945, where the obligation for Muslims to practice syari'ah was included in the first Pancasila principle. This clause, however, was later

dropped by these leaders because of strong objection from the nationalists and non-Muslim groups from Eastern Indonesia.<sup>4</sup>

As a compromise for the conflicting demands, either to be a secular or an Islamic state, Indonesian officials often claim that Indonesia is neither a religious nor secular state but a Pancasila state. In the Pancasila state, the Constitution guarantees “all persons the right to worship according to his or her own religion or belief” and states that “the nation is based upon belief in one supreme God” (Chapter 29, 1945 Constitution). The state also recognizes equality among citizens without looking at their religious, ethnic, and gender backgrounds. The religious principle is reflected in Indonesia’s recognition and support of six formal religions: Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism—the last one only recently recognized.<sup>5</sup> The government, through the Department of Religious Affairs, arranges matters related to religious education and relations among religious followers. Indonesia also sanctions Islamic courts on matters relating to marriage, divorce, and inheritance, together with national courts. The government often argues that the existence of these formal institutions proves that Indonesia is not a secular state.

In contrast to the concept of the secular state, therefore, the concept of the Pancasila state as imagined by many Indonesian lead-

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<sup>4</sup> To address the demands of Muslim groups, Sukarno said that Muslims as well as other religious followers could try as hard as they liked to obtain as many seats as possible in the parliament to promote their platform of values and norms to be implemented in Indonesia. See Sukarno’s speech at the Meeting of Dokuritsu Junbi Chosakai or Preparatory Committee for Indonesian Independence (Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia or BPUPKI), 1 June 1945 [Sukarno in Feith and Castles 1970: 45]. For the Jakarta Charter, see Note 10 in this chapter and Fahlesa Munabari’s chapter in this book.

<sup>5</sup> The recognition of Confucianism as one of the official religions is based on a Letter of Minister of Religion No. MA/12/2006, which in turn strengthens Law No. 1/PNPS/1965. The Law states that religions embraced by Indonesians are Islam, Christianity, Catholicism, Hinduism, Buddhism and Khonghucu or Confucianism. The Letter of Minister is followed up by a Letter from Minister for Internal Affairs No.470/336/SJ on 24 February 2006, which orders all governors, district heads, mayors and other state apparatuses to give the same administration service for the followers of Khonghucu as to other religious followers [*Media Indonesia*, 6 March 2006].

ers to a certain extent requires the role of the state in religious matters. The state cannot be neutral and inactive in matters of religion as it is supposed to be in a secular state.<sup>6</sup> The role of the state under Indonesia's Pancasila cannot be explained in a strict perspective of a secular state that separates state and religion.<sup>7</sup> Perhaps the condition of state-religion relations in Indonesia can be explained appropriately by Alfred Stepan's concept of "twin toleration" wherein the state and religious organizations continue to negotiate their position. The state has tried to define its borders on religious matters while the social organizations have attempted to increase the role of religion in the state [Stepan 2000: 37]. Following Stepan's concept, in Indonesia, what Stepan might describe as "the minimal boundaries of freedom of action" are continually negotiated between the Muslim institutions and the state. Despite the institutionalization of some Muslim teachings such as Islamic courts, some Muslim organizations keep demanding more Islamic *syari'ah* be implemented by the state.<sup>8</sup>

In Indonesia's relatively new democracy it is not surprising that the debate over *perda syari'ah* has arisen, although the tactics employed by some Muslim groups—such as demanding that local gov-

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<sup>6</sup> Amartya Sen [2006], for example, argued that the secular state concept contains two fundamental ways of interpretation and analysis directed to: (1) political neutrality between different religions, and (2) political prohibition of religious associations in state activities.

<sup>7</sup> The terms "state" and "government" are used interchangeably in this paper. Although in some writings, the state has been differentiated with regime and government. See [Lawson 1993] in some other cases they are so interconnected that they cannot be separated. In cases of well-established states such as in the Western countries, this separation may work well because of well-established state political and administrative mechanisms and political ideologies. However, in the Third World states such as Indonesia, the state is still under formation. When the government and regime change, the state's character may also change.

<sup>8</sup> Stepan's concept of "twin toleration" survives if a country recognizes and maintains minimal characteristics of democracy. In the minimal condition of democracy, religious groups are free to express their values and to practice their religious activities. Religious groups are also free to form political parties. However, their activities are bound to follow democratic principles and do not "impinge negatively on the liberties of other citizens or violate democracy and the law" [Stepan 2000: 39-40].



ernments play a significant role in implementing Islamic syari'ah—are interesting to observe. Religious doctrines such as Islam do not separate religion and politics, and have often been used to justify the need for such an intervention. Freedom of expression is utilized to express the superiority of one set of religious values over others in determining ethical values, morals, and norms for Indonesians. This is a situation in which public reasoning<sup>9</sup> has sometimes not been determined by a common rational argument and legitimacy but rather through theocratic justifications. Some Muslim groups consider the importance of a public policy not because it is good for the people but because God has made it an obligation for human beings.

Given this reality, a majority of Indonesians expect Pancasila to become an “overlapping consensus” from which the justifications for public reasoning should depart. The consensus is needed because Indonesia is a multiethnic and multi-religious country and there have been notable clashes of opinion and bitter conflicts in Indonesia since independence. However, as will be explained in this chapter, Pancasila has been interpreted in different ways according to the interests of the interpreters. Following Rawls' terminology, Pancasila is a political agreement or a *modus vivendi* [Rawls 1996: xli]. Under Rawls' *modus vivendi* concept, then, the agreement on Pancasila is achieved because the political situation has not allowed the pro-syari'ah groups to progress with the idea of an Islamic state. The fluid nature of Pancasila leaves the door open for more radical and politico-religious interpretations and manipulations of Pancasila. It is an instrumental agreement after a long and tiring debate over the implementation of Islamic syari'ah by the state. Many components in society accept Pancasila as a moral and philosophical basis through which they can discuss and define legal policies for Indonesians. As will be seen in later, these different components use Pancasila (through various interpretations) to justify their ideas.

Following the above framework, this paper attempts to highlight the challenges from pro-syari'ah groups toward Pancasila and

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<sup>9</sup> John Rawls [1993: 226] argues that in ideal of public reasoning “citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that others can reasonably be expected to endorse.”



the counter-positions put forward by the moderate groups. It also attempts to examine to what extent the two groups have had to submit to Pancasila as the common platform and point of reference and compromise in their arguments on syari'ah.

### THE REEMERGENCE OF PRO-SYARI'AH GROUPS

The debate over syari'ah, particularly about whether Islamic syari'ah or Pancasila should be the basis of the Indonesia state, is an old theme in Indonesian politics. Supporters of syari'ah have struggled unsuccessfully to implement syari'ah since independence in 1945. They suffered many setbacks during both the Sukarno and Suharto eras. During Sukarno's guided democracy, the main Islamic political parties such as Masyumi, which supported Islam as the state ideology, were banned. Similarly, in the Suharto era, attempts to promote Islam as the state ideology faced severe pressure from the Suharto government.

The current democratic or reformation era, therefore, has provided another opportunity for the pro-syari'ah groups to promote Islam as the state ideology. However, it is clear that the situation has changed and that the notion of Islam as the state ideology does not appeal to the majority of Muslims at the national level, not to mention its lack of appeal to members of other religions. In the national parliament, parties favoring the implementation of syari'ah had been outnumbered by parties against the implementation of syari'ah.<sup>10</sup> This is one reason why the proponents of syari'ah recent-

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<sup>10</sup> When the reformation took place in Indonesia after the fall of Suharto in 1998, some Muslim political parties and organizations started to demystify Pancasila and demanded the formalization of Islamic syari'ah and the Piagam Jakarta (Jakarta Charter) in the amendment of the 1945 Constitution. In early August 2002, thousands of pro-syari'ah groups and supporters protested demanding the amendment of the 1945 Constitution to include a clause that calls on Muslims to adhere to Islamic law. Their effort failed because they were outnumbered in parliament and the two largest Muslim organizations, Muhammadiyah and NU (Nahdlatul Ulama), rejected the formalization of Islamic syari'ah. In the parliament, parties such as the United Development Party (Partai Persatuan Pembangunan, PPP) and the Crescent Star Party (Partai Bulan Bintang, PBB) de-

ly changed the focus of the debates over syari'ah from the national to the regional level. They have made use of changes in the regional autonomy system (in which regions now have greater autonomy to produce bylaws) in Indonesia to legalize syari'ah through district offices. For the anti-syari'ah groups, this step is something to be challenged. They describe their worry by mentioning this as a process of "syari'ahization from below" or "creeping syari'ahization" [Anwar 2006], which means that the process of changing Indonesia into an Islamic state now moves from the regions or districts to the national level.

For the pro-syari'ah groups, the regional autonomy policies of the national government have been interpreted as an opportunity to set up pro-syari'ah bylaws. These groups see this as a way of localizing the autonomy programs. In addition, the procedure in making perda syari'ah is quite simple. According to the regional autonomy law No. 32 Year 2004 on Regional Government, the head of a region can issue bylaws after getting the agreement from the Dewan Perwakilan Rakyat Daerah or Regional Assembly of People's Representative (DPRD). The Perda can be proposed either by the DPRD or the head of a region and people have the right to give their input to the perda's draft.

In the case of perda syari'ah, local communities usually started the process of proposing syari'ah by forming a committee and then lobbying local political parties and parliament.<sup>11</sup> Such organizations

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mandated the re-inclusion of the seven words containing the obligation for Muslim to implement syari'ah, which had been dropped from the Pancasila. Outside the parliament Islamic organizations such as Front Pembela Islam (FPI), Kesatuan Aksi Mahasiswa Muslim Indonesia (KAMMI), Gerakan Pemuda Islam (GPI), Pelajar Islam Indonesia (PII), Himpunan Muslim Antar Kampus (HAMMAS), Himpunan Mahasiswa Islam (HMI), Komite Indonesia Untuk Solidaritas Islam (KISDI), and Dewan Dakwah Islamiyah Indonesia (DDII) demonstrated to support the formation of an Islamic state in Indonesia [Ma'arif et al. 2001: xix]

<sup>11</sup> They use names such as Komite (Committee) or Gerakan (Movement) such as the Banten Preparatory Committee for Islamic Laws (Komite Persiapan Syariat Islam Banten, KPSI Banten); the Movement for the Application of Islamic Laws, Yogyakarta (Gerakan Penegak Syariat Islam, Yogyakarta); the Institute for the Analysis, Application and Implementation of Islamic Laws in Garut (Lembaga Pengkajian, Penegakan, dan Penerapan Syariat Islam, Garut); the Institute for

often claim to represent the Muslim majority, and actively work through pressure groups to lobby parliamentarians—sometimes by force and mass mobilization—to push district heads and mayors to fulfill their demands.

In the process of legalizing *syari'ah*, these organizations actually represented a limited number of people concerned about Islamic *syari'ah*. In the districts where a *perda syari'ah* was proposed, many people were not really aware of or did not care about these organizations' ideas on the issue. In general the pro-*syari'ah* organizations claimed that the *perda syari'ah* they proposed was good for society. In Garut, for example, there was a forum called Dewan Imamah (Islamic Leaders Forum), but because it was seen as too slow in processing its support of the legalization of *syari'ah*, the Garut Defenders' Front of Islam (Front Pembela Islam Garut, FPIG) formed the Application Committee for Islamic Laws KPSI (Komite Penegak Syari'ah Islam, KPSI) in early 2002. The KPSI mobilized the masses and demanded district governments and parliaments apply Islamic *syari'ah*. To accommodate this demand, the local government and DPRD Garut formed the Institute for Analysis, Application and Implementation of Islamic Laws (Lembaga Pengkajian, Penegakkan dan Penerapan Syari'at Islam, LPPSI). This institution then declared the importance of the implementation of Islamic *Syari'ah* for Garut in early 2002.

To respond to a rather similar demand from some pro-*syari'ah* groups in Cianjur, the district head formed the Institution for the Analysis and Development of Islam (Lembaga Pengkajian dan Pengembangan Islam, LPPI) to prepare Islamic *syari'ah* concepts to be implemented in Cianjur. The district head also started a campaign to implement *syari'ah* by declaring a Movement to Form Good Ethical Society, or Gerakan Pembangunan Masyarakat Berahlakul Karimah

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the Analysis and Development of Islamic Laws in Sukabumi (Badan Pengkajian dan Pengembangan Syariat Islam, Sukabumi); the Institute for Analysis and Implementation of Islamic Laws (Lembaga Pengkajian dan Penerapan Syariat Islam, Pamekasan) in Madura; the Application Committee for Islamic Laws (Komite Penegakan Syariat Islam) in South Sulawesi; Front Thariqatul Jihad (Kebumen); and the Application Committee for Islamic Laws (Komite Penegakan Syariat Islam) in West Sumatra.

(Gebang Marhamah) in 2001. It should also be noted that the district head was elected by the voters in Cianjur presumably on the basis of his promise to implement Islamic syari'ah upon election as regent.

In South Sulawesi, the Preparatory Committee for the Implementation of Islamic Syari'ah (Komite Persiapan Penegakan Syariat Islam, KPPSI) was formed at the all-Muslim congress in South Sulawesi in 2000. The Congress chose Abdul Azis Kahar Muzakkar, the son of Kahar Muzakkar, a leader of the Islamic State/Indonesian Islamic Forces (Darul Islam/Tentara Islam Indonesia, DI/TII), a separatist movement in South Sulawesi in the 1950s, as committee head. The committee formed branches in all districts in South Sulawesi, and it conducted three Congresses (in 2000, 2001, and 2003). At the second Congress in 2001 it proposed the Draft Bill for Special Laws for Islamic Syari'ah (*Rancangan Undang-Undang Otonomi Khusus Syariat Islam*) for South Sulawesi Province.

The above descriptions are some examples among many cases of how perda syari'ah had been assembled by its proponents. In the last ten years since the fall of Suharto, the nature of syari'ah bylaws (perda syari'ah) promoted by pro-syari'ah activists have been motivated by ethical teachings based on Islam. They are reflected in some regional regulations such as the prevention, handling and elimination of immoral acts; obligatory Qur'an reading proficiency for students and marrying couples; the requirement to wear Muslim dress or requirement for Muslim women to cover their heads and maintain modesty in appearance; the obligatory regulation for school students to wear Muslim dress; the wearing of headscarves for female government workers and additional hours for Islamic studies; the social order, which relates to the elimination or banning of prostitution; the elimination of unmarried couples living together; the program of faith-strengthening activities; regulations to pay *zakat* or charity tax by cutting the civil servant salary; and the prohibition of alcohol. There is a district head's bylaw such as in Pandeglang, Banten, to separate the boys' classrooms from the girls' in elementary and high schools [*Kompas*, 10 August 2006]. In South Kalimantan, there are district head's rules (*keputusan bupati*) aimed at increasing concentration during Friday prayers and fasting



or *Jumat Khusu' and Ramadhan Khusu'*, and bylaws prohibiting men and women from bathing in rivers.

In practice, the bylaws refer more to the customs and norms evident in society than to Islamic teachings. As of July 2006, there were approximately 37 *syari'ah* bylaws in Indonesia. Among those that have implemented the local *syari'ah* bylaws are the districts and municipalities of Enrekang, Gowa, Takalar, Maros, Sinjai, Bulukumba, Pangkep, and Wajo in South Sulawesi province; Dompu in West Nusa Tenggara province; Cianjur, Tasikmalaya, and Indramayu districts in West Java; Tangerang City and the Pandeglang districts in Banten. Some cities such as Pamekasan in Madura, and Mataram in West Nusa Tenggara province have implemented bylaws as have almost all districts and cities in West Sumatra province except the Mentawai district, and all of the districts in Aceh have implemented *perda syari'ah*.<sup>12</sup> Some other provinces such as Riau, South Kalimantan, and Jakarta have started to discuss the possibility of adopting *perda syari'ah*.

Although these bylaws in their formulation mainly refer to ethical behaviors that are dominant in society, some proponents of *syari'ah* insist that *syari'ah* bylaws in some districts have been part of steps to apply Islamic *syari'ah*. Abdul Aziz Kahar Muzakkar, son of the leader of DI/TII who wanted to form an Islamic state in early 1950s, said that this is only an initial step and a partial application of Islamic *syari'ah* because it is only "encouraging/forcing good deeds and preventing immorality." He was not satisfied with this situation because the punishment for such acts of immorality has not been according to Islamic laws.<sup>13</sup> Similarly, Ismail Yusanto from the Liberation Party of Indonesia (Hizbut Tahrir Indonesia, HTI) said that the *syari'ah* bylaws in some districts are a good step but it is far from regulating the state and the nation. The current bylaws are

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<sup>12</sup> The implementation of *syari'ah* in Aceh is not discussed in this paper because the province received special status to implement Islamic *syari'ah* as part of a national agreement with the central government to end the separatist movement in the region.

<sup>13</sup> <http://www.indonesiamatters.com/340/preparatory-committee-for-the-application-of-islamic-laws/> (accessed 31 August 2006).



only related to the individual and personal matters such as gambling, prostitution, and alcohol consumption [*Kompas*, 25 July 2006].

The preparations to implement syari'ah bylaws started after the fall of Suharto and the rise of Vice President BJ Habibie as president in 1998. When Megawati Sukarnoputri was president she was viewed as a representative of nationalist groups and considered a strong supporter of the Pancasila state, and consequently there were no great debates about the movement to adopt perda syari'ah. Similarly, during Abdurrahman Wahid's administration there was no intense discussion of perda syari'ah. By taking advantage of opportunities arising from the introduction of the regional autonomy policy, the KPPSI in South Sulawesi, for example, started to lay the groundwork for the legalization/formalization of perda syari'ah from its first congress in 2000. It sent a bill about Islamic syari'ah to the national parliament, or People's Representative Assembly (Dewan Perwakilan Rakyat, DPR), in Jakarta in 2002, but it failed to receive support from parties and the elites in Jakarta. At that time, Megawati's vice president, Hamzah Haz, from the pro-syari'ah United Development Party (Partai Persatuan Pembangunan, PPP) neither agreed with nor supported the movement. In a speech before the second Muslim Congress organized by KPPSI South Sulawesi in 2001 in Makassar, Haz said that the implementation of Islamic syari'ah should consider the unity of Indonesia as a nation consisting of different religions and he also expected that the result of the congress would not become a threat to the followers of other religions [KPPSI 2001].

The media, in particular, played a significant role in promoting the term perda syari'ah and making it a burning issue. As mentioned, the preparations for perda syari'ah in some regions had started in 1999 and 2000, but the debates only culminated significantly in 2006 when some sections of the media, academics, national figures, and nongovernment organizations (NGOs) looked at the way the syari'ah bylaws had spread over various districts and provinces in Indonesia. Two leading national magazines—*Gatra* and *Tempo*—made this an explosive issue in May 2006. *Gatra*, for example, raised the growing number of districts to adopt perda syari'ah as a strategy to push the implementation of syari'ah at the national level. It also

reported about how the supporters of syari'ah used the strategy to control districts before spreading syari'ah to the provincial and national levels, a strategy *Gatra* described as "from village to city" [*Gatra*, 1 May 2006]. *Tempo* raised the same issue by reporting that the perda syari'ah was another effort on the part of pro-syari'ah groups, which had failed to include syari'ah in the amendment to the 1945 Constitution. By adopting this strategy, according to *Tempo*, proponents of the perda syari'ah switched strategies: from the national level, which wanted to include Islam for the whole nation in a quick and comprehensive lane, to promoting syari'ah through the slow lane [*Tempo*, 14 May 2006].

Perda syari'ah was actually promoted sporadically in some districts by its proponents without clear coordination between districts. It is hard to find a grand and common strategy taken by pro-syari'ah groups to systematically spread perda syari'ah. The only similarities had been in the strategies they used and in drafting the legislation; the drafts of syari'ah bylaw tended to be copied from one district to the next. Pro-syari'ah figures such as Fauzan al-Anshari from the Indonesian Mujahidin (Holy Warrior) Council (Majelis Mujahidin Indonesia, MMI); Ismail Yusanto from HTI; and Uztad Wahyuddin, the secretary of MMI, were ready to help regions that had asked them to draft Islamic bylaws [*Gatra*, 1 May 2006]. The pro-syari'ah groups also supported one another in defending the need for perda syari'ah from the local and national critics although its adoption, of course, depended upon the efforts of local pro-syari'ah groups in assessing the political situation in their districts. The only exception was in June 2006, when about forty Muslim Islamic local and national pro-syari'ah organizations such as the Defenders' Front of Islam (Front Pembela Islam, FPI), HTI, the Betawi Group Front (Front Betawi Rempug, FBR), some leaders of PBNU (Pengurus Besar Nahdlatul Ulama or Nahdlatul Ulama Central Board), the Indonesian Council for Islamic Propagation (Dewan Dakwah Islam Indonesia, DDII), and As Syafi'iyah, gathered in Jakarta to consolidate their power and support the implementation of perda syari'ah in many regions [*Jawa Pos*, 22 June 2006]. However, this was more a reaction to the criticism of their pro-syari'ah position than a representation of a grand or common strategy.

## THE CONTESTATIONS BETWEEN PRO- AND ANTI-SYARI'AH GROUPS

It is interesting to note that the definition of syari'ah or Islamic laws itself is debatable among Muslims. Syari'ah is a contested term because many Muslim clerics have different opinions about its contents. Abdullahi An-Na'im [2006: 3], an influential moderate Muslim thinker, for example, argues that the many versions and interpretations of syari'ah make it difficult to decide which one is superior since there is no single authority in Islam to decide such matters. He said the decision to select one version of syari'ah and leave another version is a political one taken by a ruler in Islamic history, and is therefore a secular decision [*ibid.*]. In this section, I will present the main arguments advanced by the pro and anti- syari'ah groups to support their positions.

### *Pro-Syari'ah Arguments*

The arguments put forth by the pro-syari'ah groups to support the need to adopt syari'ah have at least three important aspects (see Table 1 for a summary of the debate between pro- and anti-syari'ah positions). First, the argument commonly departs from the assumption that the state and religion are inseparable. For supporters of syari'ah, the syari'ah bylaw was shown as something necessary and described as part of core Islamic teachings. Islam according to them does not differentiate between politics and religion. Indeed in an interpretation of classical Islamic state theory, the purpose of the state is "to make possible the service of God" and its moral purpose is implemented in the Muslim Syari'ah Laws [Von Grunebaum 1955 in Van der Kroef 1958: 33-34]. Syari'ah is seen as God's laws that must be implemented to solve many problems in society. As stated by Abdul Aziz Kahar Muzakkar, the South Sulawesi KPPSI leader, the Islamic syari'ah cannot be negotiated; it is a definite end. It means that the state must be responsible in implementing Islamic syari'ah. Former MMI leader, Abu Bakar Ba'asyir, who was released from jail, in June 2006, called for his district government in Solo to enforce the implementation of all Islamic syari'ah such as prayer,



charity, and fasting—the obligations of all Muslims [*Tempo Interaktif*, 18 June 2006].

Second, many arguments of the pro-syari'ah groups are based on an understanding of freedom and democracy as the freedom to realize an Islamic syari'ah. Such arguments have been promoted for a long time among Muslims in Indonesia, as noted by C. A. O. van Nieuwenhuijze [1949: 55-56 in Van der Kroef 1958: 34]. The pro-syari'ah groups may drop the demand to include seven words from the Jakarta Charter by stating that the omission is *taqdir* (God's will), which has been accepted by Muslims [*Antara News*, 25 July 2006].<sup>14</sup> Or they could replace it with the *Piagam Madinah* (Madinah Charter)<sup>15</sup> as offered by former leader of the Prosperous Justice Party (Partai Keadilan Sejahtera, PKS),<sup>16</sup> Hidayat Nur Wahid, but the rhetoric of pro-syari'ah groups clearly reflect the effort to make Islamic syari'ah the formal law binding all citizens in Indonesia. In responding to the criticism from the anti-syari'ah groups that the freedom to promote Islamic syari'ah is not sensitive to the issues of multiethnic and multireligious Indonesia, the pro-syari'ah groups have said that they would still supported the unity of Indonesia. However, they want to emphasize that to have syari'ah legalized and implemented is also the right of every religious group in Indonesia. In the declaration after the meeting of forty Islamic organizations in June 2006, the pro-syari'ah groups stated that they would also continue to support laws such as the antipornography law based on Islamic syari'ah and perda syari'ah for the whole of Indonesia [*Jawa Pos*, 22 June 2006].

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<sup>14</sup> Statement of Adian Husaini from DDII [*Antara News*, 25 July 2006], <http://www.antara.co.id/seenws/?id=38630> (accessed 1 September 2006).

<sup>15</sup> It was an agreement between Prophet Muhammad and a non-Muslim in Madinah to manage the government. It did not exclude the non-Muslims in the Islamic state but asked them to defend their country together with Muslims. The non-Muslims were also allowed to practice their religion.

<sup>16</sup> Although formally the PKS has changed its position to support the Piagam Jakarta (Jakarta Charter), its activities supporting the formalization of Islamic syari'ah still continue. In its strategy, the PKS switched from promoting the Piagam Jakarta to supporting the Piagam Madinah (an agreement between Prophet Muhammad supported by his other Muslim followers as migrants from Mecca, and non-Muslims in Madinah) [Collins 2003: 153].

A leader of the PKS Islamic party in the DPR, Mahfudz Sidik, regretted the protests against perda syari'ah by some parliamentary members from Golkar and non-Muslims,<sup>17</sup> who said that the perda syari'ah was not sensitive to the beliefs of those religions in Indonesia that have a relatively small number of adherents. He rejected the proposal to remove the bylaws because the perda had been made in line with the law No. 32/2004 on regional autonomy [*Antara News*, 14 June 2006]. Similarly, other parliamentarians from Muslim parties such as the chairman of the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR), Hidayat Nur Wahid from the PKS; Patrialis Akbar of the National Mandate Party (Partai Amanat Nasional, PAN); and Chozin Chumaedy and Lukman Hakim (PPP) claimed that Muslims have the freedom to aspire to the implementation of syari'ah in Indonesia [*Tempo Interaktif*, 14, 15, 16 June 2006]. The PKS and PPP members also mobilized one hundred thirty-four members of the parliament to reject a petition to the president proposed by fifty-six parliamentarians to annul the perda syari'ah. In defending their rights to promote syari'ah, the head of the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI), Ma'ruf Amin [2006], argued that the anti-syari'ah groups stated that they support democracy, which relies on voting and the majority voice, but now when people aspire to implement perda syari'ah, they argued that those same democratic mechanisms did not apply. Other pro-syari'ah proponents also subscribed to this argument by stating that perda syari'ah has been legalized through the democratic process and that the perda represented the aspirations of Muslims living in their districts [Pane 2006; Kisihandi 2006; *Republika*, 2, 15, 16 June 2006].

Third, the pro-syari'ah proponents consider pluralism a fact of political life: there are many views in the society and they should be respected and even developed. For them, pluralism also means

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<sup>17</sup> The fifty-six Members of Parliament came from many political parties with the exception of the Muslim political parties PKS and PPP (Partai Persatuan Pembangunan or United Development Party). See <http://www.indonesiamatters.com/445/mps-denounce-shari'a-laws/> (accessed 3 August 2006). The non-Muslims came from the Christian Welfare and Peace Party (Partai Damai Sejahtera, PDS).



that it is not necessary for Indonesia to have a single, unified legal system. Adian Husaini from DDII and Zainal Maarif from PBR (Partai Bintang Reformasi or Reformation Star Party) suggested that each religious group promote its own religious teachings to become laws for its followers [*Antara News*, 25 July 2006; *Republika*, 15 June 2006]. They said that instead of displaying phobia toward Islam, it would be better for the Christians and other religious followers to promote their own religious laws.

When the concept of an Islamic state was interpreted as Piagam Madinah (Madinah Charter), as suggested by former PKS leader Nur Wahid, the meaning of pluralism remains the same. Different religious communities may adopt their own syari'ah or laws. The Madinah Charter, according to Nur Wahid, who was also the MPR Speaker from 2004-2009, was a kind of social contract, which guarantees the freedom of religion and the freedom to practice religions for all in the Madinah community. According to Nur Wahid, not only Muslims have the obligation to implement Islamic syari'ah; other groups (Madinah Jews and Christians) are given authority to implement their religious orders under the Charter [Collins 2003: 153]. He added that the Piagam Madinah fitted the Indonesian context and could be used to change the pluralistic nature of Indonesian society.

In promoting their view, the pro-syari'ah activists often use religious faith as written in the Islamic Holy Book Qur'an and the Prophet's words (Hadith) as their main argument. In this faith-based politics, syari'ah proponents always link their arguments with the concept that everything related to Islam is good. It is assumed that the legitimacy of their proposal on perda syari'ah comes directly from God and thus cannot be negotiated. Those who do not support it had even been criticized for acting against God's orders. The leader of MMI, Abu Bakar Ba'asyir, said that those not in agreement with syari'ah Islam are considered *murtad* (apostates)<sup>18</sup> [*Nederland News Radio*, 6 July 2006; *Kompas*, 29 July 2006]. This view is socialized to attract Muslim support to the syari'ah. They use concepts from Hadith such as "Islam is *rahmatal lil alamin* or the blessing for the

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<sup>18</sup> *Murtad*, leaving Islam and converting to another religion is considered a big sin in Islam punishable by death in classical Islamic Law.

universe” or that “Islam is the solution” for many problems in their campaigns. The first thing that the Muslims should understand, they argue, is that Islam is a blessing for the universe. The pro-syari’ahists also used an example from many centuries ago about the glory of Islam and how Islam treated minorities at that time. This example, which had occurred in a different culture, place and time, was used to show how Muslims could live in harmony with other religious followers. Based on this historical fact, some pro-syari’ah activists such as Yusanto and Amin have said that there is no reason for other religious followers to fear Islamic syari’ah [*Gatra*, 1 May 2006].

The pro-syari’ah activists depart from an assumption that syari’ah is something from God and therefore it is good and certainly not debatable and ready to be applied in society. They also talk about Islamic syari’ah in general and rarely mention what syari’ah is in detail. MS Kaban, leader of the pro-syari’ah Crescent Star Party (Partai Bulan Bintang; PBB) for example, uses this style of argument. In his speech “*Indahnya Syariat Islam* [The Goodness of Islamic syari’ah]” delivered at the anniversary of his party, he said, “If syari’ah is applied the benefit is not just for the unity of Indonesia but also for a fair and cultured humanity, and for the social justice for all of the society (sic)” [*Gatra*, 22 July 2006]. Amin [2006] elaborated the same argument when stating that the adoption of syari’ah law will certainly guarantee a blessing for all people because syari’ah laws and Islamic teachings clearly come from Qur’an and the Prophet’s Hadith.

The spread of the syari’ah bylaws obtained support as well from politicians from non-Islamic parties such as Golkar and the Indonesian Democratic Party of Struggle (Partai Demokrasi Indonesia Perjuangan, PDIP) Aceh branch. These politicians took pragmatic steps to maintain their political position and influence in society. They often used the perda syari’ah issue to defend their position against their critics. In the districts, such as Bulukumba (South Sulawesi) and Cianjur (West Java), the district heads represented the Golkar party. Wasidi Swastomo, former Cianjur district head, stated clearly that he would implement Islamic syari’ah if elected. When he was, he delivered on his promise by implementing the concept toward a “Good Ethical Society” in Cianjur, by naming the streets

with Arabic letters and on 29 August 2003, and issuing an obligation for women to wear a scarf [*Pikiran Rakyat*, 1 January 2005].

### *Anti-syari'ah Arguments*

In contrast to the pro-syari'ah arguments, the anti-syari'ah groups, in particular, worry about the development of perda syari'ah and monitor the efforts of the pro-syari'ah groups to form an Islamic state (see Table 1 for a summary of the debate between pro- and anti-syari'ah concerns). Some Islamic organizations such as Abdurrahman Wahid's organization, the Wahid Institute, stated that this is only one step away before the pro-syari'ah exponents change Indonesia into an Islamic state [*The Jakarta Post*, 8 June 2006]. The strategy adopted by some of the pro-syari'ah groups and individuals, by using the legalization of syari'ah in some districts and cities, was perceived by Ahmad Suaedy, director of the Wahid Institute, as a strategy from the village to control the city [*Gatra*, 1 May 2006].

The arguments of the anti-syari'ah proponents can also be divided into three aspects. First, there is a strong assumption among the anti-syari'ah groups that the state and religion should be separated in political life. The anti-syari'ah groups mainly consist of intellectuals educated in the West and their arguments also depart from Western political theories and thoughts, which generally emphasize the importance of human conscience. They take a clear line that religion is a private matter while politics is a public concern. The anti-syari'ah proponents in general support the idea of a secular state, which is neutral on religious matters and does not privilege certain religions within it. It is this neutrality that will create space for each religion to develop and to conduct dialogues with other religious communities. The dialogues will grow religiosity and place religious values as an ethical base for Indonesians [Mallarangeng and Denny JA 2002: 116].

Second, for anti-syari'ah groups, freedom does not mean the freedom to form another system that is not democratic, and the freedom used for this purpose is one that destroys democracy itself [Mujani 2006]. They argue that the pro-syari'ah groups use democracy and freedom for undemocratic goals. By promoting syari'ah,

Saiful Mujani [2006], one anti-syari'ah proponent, said that the pro-syari'ah supporters promote a system that does not respect democracy and pluralism. In particular, he points to the effort of Hizbut Tahrir groups to build a caliphate system, a theocratic system based on Islam. According to Mujani, the system is not democratic because the citizens, particularly non-Muslims and women, do not have equal rights [Mujani 2006]. Another anti-syari'ah proponent is Liberal Islam Network (Jaringan Islam Liberal, JIL) activist Luthfy Assaukanie, who argues that Hizbut Tahrir is against the Republic of Indonesia because it supports a different kind of political system. He applauds the MUI *fatwa*, which states that the Republic of Indonesia is final because this can be interpreted as a defense against Hizbut Tahrir, which aspires to the implementation of a caliphate system. These two anti-syari'ah proponents are also concerned that the perda syari'ah may bring Indonesia back to the old age of Islam as being practiced by the Taliban in Afghanistan.

In contrast to the pro-syari'ah groups, which see freedom as an opportunity to include Islamic syari'ah, some anti-syari'ah figures argue that the freedom should be used in the context of Pancasila. The opportunity that freedom offers should be considered alongside the goal of Pancasila to build a harmonious relationship among Indonesians [Sumardjo 2006] and a social solidarity or a feeling of "we-ness" as Indonesians [Karman 2006]. Edy Prasetyono [2006] said that one primordial group has never bound Indonesia and that the product of laws should also apply to all citizens without regard for their ethnicity, religion, and gender. Indonesia's existence is not based on ethnicity, race and religion [*ibid.*]. In particular, according to Goenawan Mohamad [2006b], a religious group cannot claim to represent the voice of God and feel that its religious interpretation is superior to all others and thus should be applied in Indonesia. Pancasila means that religion cannot be enforced on people; rather, it should give freedom to people to find their own God [*ibid.*].

Third, the anti-syari'ah exponents understand pluralism not only as a fact—that many religious and ethnic groups exist in Indonesia—but also as an ideal that these groups interact with one another in harmony to find the best solutions for Indonesia. The proponents of anti-syari'ah therefore view Pancasila as a histori-



cal agreement to settle the problem of pluralism and address the different views existing in Indonesian society for a long time to come. For them, the discussion of religious issues should depart from the assumption of tolerance of opinion and on the history that both an Islamic state and a communist state have been rejected in Indonesia. These views are reflected in a memorandum of seventeen national figures entitled "Maklumat Keindonesiaan"<sup>19</sup> or "Statement of Indonesianness" to support Pancasila as an agreement that was born through the struggle and conflict of interests, ideas, and compromise. The statement read by lawyer Todung Mulya Lubis, to commemorate Pancasila on 1 June 2006 in Jakarta, said that Pancasila was manipulated in the past [*Kompas*, 6 June 2006], giving no room for people to interpret it. Pancasila, for social activist Dawam Raharjo [2006], is a good basis for Indonesia as a multireligious society. According to Raharjo, it can frame dialogues among different religious followers.

In line with this view, the smaller religious groups in Indonesia also understand pluralism as an opportunity to participate equally in Indonesia. According to Yahya Wijaya [2005], many Christians accept Pancasila not only to protect themselves from the domination of the Muslim majority, but also for the sake of the existence of the nation. T.B. Simatupang, a Christian former army general, has asked Christians to subscribe to Pancasila, since according to him there is no contradiction between Pancasila and the Christian faith. Eka Darmaputera, another Christian, has said that Pancasila is the breakthrough from the fierce debate about whether Indonesia should be an Islamic state, secular state, or communist state [*ibid.*]. Pancasila can maintain the unity and plurality of Indonesia.

Recently, Robertus Robert, a Catholic human rights and democracy activist, sounded the call for Pancasila in behalf of reli-

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<sup>19</sup> Signatories to the "Maklumat Keindonesiaan" include Goenawan Mohamad, Jakob Oetama, Rahman Toleng, HS Dillon, Rosita Noor, Karlina Supelli, Azyumardi Azra, Daniel Dhakidae, Mochtar Pabottingi, and B. Herry-Priyono. They are well-known intellectuals and human rights activists who regularly come forward to defend the rights of people and criticize the government. [*Kompas*, 6 June 2006]



gions with smaller member bases in Indonesia. According to him, Pancasila is needed for democracy in Indonesia and to prevent the wish of some groups to change Indonesia into an Islamic state. For Daniel Sparingga, a Christian and a lecturer at Airlangga University Surabaya, Pancasila is important for Indonesian unity. The Indonesian nation, he argues, is divided on many issues including the plan to legalize the antipornography laws [*Radio Nederland News*, 1 June 2006].

In the debate over the meaning of Pancasila, the anti-syari'ah proponents see perda syari'ah as opposed to Pancasila because perda syari'ah is based on only one religion as a platform and therefore disregards pluralism and multiculturalism among ethnic and religious groups in Indonesia. They argue that the efforts to legalize syari'ah are really against the agreement in Pancasila, which recognizes equality among religious followers. On the basis of this agreement, one of the important intellectuals behind the anti-syari'ah groups, Saiful Mujani, argues that Pancasila and the 1945 Constitution have actually represented Islamic aspirations, without any need to push Indonesia further toward an Islamic state. These two foundations of the state were the result of *ijtihad* (interpretation) of Muslim leaders in the past and, therefore, according to Mujani, it is not a sin to accept both of the state's foundations; it could even be seen as good deeds for Muslims to accept and adhere to the Constitution. By this agreement, the Muslim leaders as founding fathers have provided the foundation for Muslims to accept Pancasila as part of the implementation of Muslim faith in their political life [Mujani 2006].

The anti-syari'ah arguments have been supported to a certain degree by reports in some sections of the media, particularly in bringing back Pancasila ideology as the main agreement and philosophical foundation for the Indonesia state. Pancasila had endured a bad image because the New Order used the ideology to justify its policy to suppress opposition groups—particularly those it labeled as right and left extremist—that were out to turn Indonesia into either an Islamic or a Communist state. But Pancasila has received fresh attention recently following the growing confusion and uncertainty among the public as to what reference they should have in facing conflicting ideological aspirations within the society. Dawam

Rahadjo said that in the past, Suharto interpreted Pancasila to serve his political needs, particularly by referring to Supomo's idea of an integral state. It is now the time, according to Rahadjo, to renew the interpretation of Pancasila because it could become the common platform for many issues including the perda syari'ah issue. In Pancasila is embodied the principle of secularism and liberalism.<sup>20</sup>

Given the above debate, it is no wonder that the perda syari'ah was seen by those opposed to the introduction of syari'ah as representing the identity-politics approach of pro-syari'ah groups. The expression of the issues in identity terms—by using the Islamic faith against non-Islamic faiths—often raises furor and conflict at the national level. It may also produce strong reactions among pro-syari'ah followers in defending their position.<sup>21</sup> Some so-called minority groups in Indonesia have also criticized the syari'ah bylaws. They feel they are being discriminated against by the socialization and enforcement of perda syari'ah that only specifically apply to Muslims, as if the nation belonged only to one group. This and other similar views have been expressed by minority groups in the national parliament through their representative parties. The leader of the Christian Welfare and Peace Party (Partai Damai Sejahtera, PDS) in the DPR, Constant Ponggawa, declared that the regulations inspired by syari'ah are a national misunderstanding since the Constitution forbids laws that discriminate against any particular group [*Pelita*, 24 May 2006]. Ponggawa was one of the fifty-six national parliamentarians who signed a petition sent to President Susilo Bambang Yudoyono to annul the syari'ah bylaws.<sup>22</sup>

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<sup>20</sup> Interview with Radio 68H in Forum Freedom 56, 12 June 2006.

<sup>21</sup> For example, non-Muslim religious followers such as the majority Hindus in Bali demanded to have Hindu laws in Bali. It is reported that majority of provincial parliamentarians who are followers of Hinduism demanded the reading of a report to parliament by using Hindu prayers and greetings [*Republika*, 24 July 2006].

<sup>22</sup> For the fifty-six Members of Parliaments came from many political parties except Muslim political parties PKS and PPP, see, <http://www.indonesiamatters.com/445/mps-denounce-shari'a-laws/> (accessed 3 August 2006).

Table 1 Summary of Debate between Pro and anti Syari'ah Groups

Issues	Pro-shari'ah groups	Anti-shari'ah groups
State-religion relations	State politics and religion are inseparable. The state is "to make possible the service of God" and its moral purpose is implemented in the Muslim Syari'ah Laws.	State and religion should be separated. A clear line should be drawn acknowledging that religion is a private matter and politics is a public concern.
Freedom	Freedom and democracy as freedom to realize an Islamic syari'ah	Freedom is not the freedom to form an undemocratic system; freedom is not the freedom to destroy democracy. Freedom exists to build a harmonious society.
Pluralism	Pluralism recognizes that there are many views in society that should be respected and even developed. There should be no single and unified legal systems for Indonesia.	Pluralism not only recognizes that there are many religious and ethnic groups, but also that these groups should interact with each other in harmony to find the best solution for Indonesia.
Basis of the arguments	Derived from religious texts.	Derived from human conscience.

### STATE RESPONSES AND THE CHANGING LANGUAGE OF PRO-SYARI'AH GROUPS

As far as the above debate is concerned, the state was initially reluctant to interfere and tended to let society settle the problem.<sup>23</sup> This is understandable, since the state interfered in many aspects of civil society during the thirty-year New Order era and people hardly wish this to happen again during the current era of democracy. Some activists such as the former member of the Commission for Missing Persons (Komisi untuk Orang Hilang, Kontras) Munar-

<sup>23</sup> In some cases such as that of Ahmadiyah, however, the government intervened. See the chapters of Ahmad Suaedy and Sasaki Takuo in this book.

man, reminded the government that in a democratic country the intervention of the state in civil society, including the banning of religious organizations, should follow the legal process. Even the leader of Muhammadiyah, the second-largest Islamic organization in Indonesia, Din Syamsuddin, met President Yudhoyono to make sure that the government would not ban some radical Islamic organizations accused by anti-syari'ah groups of bringing anarchy to society.

The central government has attempted to play down the situation by giving general statements asking people to put Indonesian unity ahead of other interests. The government does not want to be seen to support one group, afraid it might lose the sympathy of another. Some ministers have asked people to monitor the syari'ah bylaws carefully. Defense Minister Juwono Sudarsono [2006] said that the perda has strict codes, which might be applicable to their personal and public conduct, and also reminded the proponents of perda syari'ah to be more tolerant of other religious followers. Vice President Jusuf Kalla has neither supported nor rejected the syari'ah bylaws. He said he was embarrassed that Muslims wanted simple things such as reciting the Qur'an to be arranged and implemented by the state [*Radio Nederland*, 6 July 2006; *Kompas*, 6 July 2006]. He added that for the longest time Islamic syari'ah has been implemented by Muslims privately as part of their responsibility to God, and not left up to district heads or other government officials. Kalla also said it was all right to issue perda syari'ah, although he preferred that society itself implemented the syari'ah [*Ibid.*]. He has also criticized some bylaws that had been enforced by local governments, saying that by enforcing the bylaws, the district heads or government takes over God's task to punish those who do not obey Him [*Republika*, 26 June 2006].

In responding to the demand to ban the syari'ah bylaws, the Minister of Internal Affairs Muhammad Ma'ruf has promised to look into whether the bylaws were against the legal system in Indonesia or not. He also cautioned the district heads who had faced protests because of implementing controversial bylaws about prostitution to be mindful of national law. Similarly, the minister ordered the East Lombok district head to lift a bylaw that obliges schoolteach-



ers to pay *zakat* "profession" (profession charity tax) and also annulled South Kalimantan's provincial Regulation No. 1/2000 about the ban on alcohol consumption. He also asked the governors in thirty-three Indonesian provinces to keep monitoring and report to him regarding the implementation of perda syari'ah [*Antara News*, 23 August 2006].

Generally, the government has refrained from adopting a strict position, choosing instead to wait and react (or not) to what happened in society. According to the autonomy law No. 32/2004, the state has the power to annul the bylaws if these contradict national laws [Mahfud 2006: 47]. However, instead of invoking this authority, it has allowed society to decide on the importance of perda syari'ah, responding only in the wake of strong protests, such as in the Tangerang case that involved a controversial antiprostitution bylaw.

The slow response from the government<sup>24</sup> has indeed motivated civil society groups to call for the strengthening of Pancasila as the basis for Indonesia's unity. Some groups are concerned that the current perda syari'ah may endanger unity and pluralism in Indonesia. Many community leaders, academics, and politicians have emphasized the importance of Pancasila in solving Indonesia's problems. As the debate heated up in the early 2000s, Pancasila was again brought to the forefront of Indonesian politics to settle the pro-contra debate on perda syari'ah. Various initiatives were put forward, one of which was supported by activists such as Goenawan Mohamad, Jakob Oetama, Rahman Toleng, H.S. Dillon, Rosita Noor, Karlina Supelli, Azyumardi Azra, Daniel Dhakidae, Mochtar Pabottingi, and B. Herry-Priyono. These human rights and democracy activists, who had been very critical of Suharto's manipulation of Pancasila, signed a memorandum entitled "*Maklumat Keindonesiaan*

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<sup>24</sup> The limited respond from the government can be understood because the syari'ah bylaws were symbolic issues aspired to by Islamic groups that did not really impact on the government's position and general policies. The bylaws did not address what many view as the government's neo-liberal policy bias, which marginalized the poor. They did not talk about the growing gap between the rich and the poor; neither did they address the rampant corruption at all levels of the bureaucracy. The bylaws work for politically and economically marginalized or oppressed people such as prostitutes.

(Statement of Indonesianness)” and appealed to the public to support and sign the statement to ensure their commitment to the unity of Indonesia based on Pancasila. The statement was read in front of President Yudhoyono, who also attended the meeting. Pancasila, for these national figures, recognizes pluralism among its followers, although it is not a doctrine of ultimate truth. The statement also declares that no one can force on others or monopolize the truth—or their version of the truth—or control the discussion on Pancasila [*Kompas*, 6 June 2006].<sup>25</sup> The task of interpreting Pancasila, in this view, must be conducted by remembering the historical journey of Pancasila.

In his presidential address commemorating the birth of Pancasila on 1 June 2006, President Yudhoyono responded to the above statement by emphasizing the importance of Pancasila. This is a rare moment, because since the end of the Suharto regime, hardly any of the three succeeding presidents dared mention Pancasila because they were afraid of being discredited for adopting Suharto’s approach to Pancasila. The speech about Pancasila, therefore, is widely viewed as a reaction to the growing demand from some Muslim groups to implement *syari’ah*. In his speech, Yudhoyono implicitly addressed the pro-*syari’ah* groups by summoning the importance of national consensus on Pancasila. He said:

“Let us make Pancasila the basis for reform. In this period of transition, many of us tend to create new realities and directions but abandon the old values, which should become part of our identity and be used as a tool for unity. We should end the debate on alternatives to the Pancasila as our ideology. We should keep on with efforts to increase the people’s welfare and to uphold justice based on the ideology that we have.”<sup>26</sup>

<sup>25</sup> These views are in line with Sukarno’s ideas about pluralism. According to Sukarno [1970], the goal of Indonesia’s independence was not to build a state for one group such as the nobility. The essence of pluralism was to acknowledge the existence of noble groups, Islamic groups, and the rich in Indonesia. Independence for Indonesia, according to Sukarno, was meant to be “all for all” (“*semua untuk semua*”). See Sukarno’s speech at BPUPKI meeting on 1 June 1945.

<sup>26</sup> <http://www.indonesiamatters.com/408/pancasila/> (accessed 10 September 2006).

What can be concluded from the debate is the plea to discuss Pancasila openly and to make it a basis on which to discuss "Indonesianness" or Indonesian identity and to chart the best course for Indonesia in the future. In contrast to the New Order regime, which had used Pancasila to blame its opponents and then banned such debates, the current democratic regime allows different opinions with regard to the interpretation of Pancasila.

The debate on Pancasila leads us to the argument advanced by the late Abdurrahman Wahid, the late Nurcholish Madjid, An-Na'im, and John Bowen. They argue for the importance of contesting religious values in public through public deliberations before the ethical values can become public policy. They argue that religious teachings must be seen from their essence—justice and peace—and they welcome the influences of other values in the process of making public policies. According to Ulil Abshar-Abdalla [2002], the main proponent of the Liberal Islam Network, which is also against the application of syari'ah in Indonesia, Islamic syari'ah should be interpreted in the Indonesian context and it is not a one-size-fits-all principle.

Social activist Dawam Raharjo [2006] advances a similar argument, saying that under Pancasila ideology, it is possible for Islamic syari'ah to become public law as long as it is objectified and rationalized. By objectification, he means that the syari'ah has to be contested and explained in public and people must accept it voluntarily. He cited the case of the syari'ah bank in Indonesia, which has been accepted by many religious followers since it is marketable and logical.<sup>27</sup>

The need for the public deliberation of Islamic syari'ah to become public law was also highlighted by former Muhammadiyah leader Syafii Maarif [2006], who said that the perda syari'ah in the form of the anti-immorality regulation should not be promoted under the banner of Islam because immorality is the enemy of various religions as a whole. It should be debated as general regulation [*ibid.*].

It has become apparent to supporters of syari'ah that to make any kind of progress they must treat Pancasila as the main platform

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<sup>27</sup> Forum Freedom 56 Interview with radio 68H, 12 June 2006

from which to discuss *perda syari'ah*. Although some of the supporters still rhetorically support the importance of an Islamic state, they cannot deny the fact that they are outnumbered and their arguments are not supported within society in general. They need to refer to and look at Pancasila as the main platform from which to discuss *perda syari'ah*.

They have since used and interpreted Pancasila in a number of ways to justify their struggle to implement *syari'ah*. In the context of state-religion relations, for instance, the proponents of *syari'ah* have stated that they support Pancasila as a national agreement. This can be seen from their response to the accusation that the *syari'ah* bylaws are not in line with Pancasila. They viewed this criticism as propaganda coming from anti-*syari'ah* activists determined to attack Islam. Ma'ruf Amin [2006], one of the MUI heads, has said that those who claimed *syari'ah* was against Pancasila attempted to contradict Islam with Pancasila. He says that in the Indonesian context, there is nothing wrong with the efforts to bring *syari'ah* into the state since it is in accordance with the Pancasila state, particularly its first principle about the oneness of God [Amin 2006]. The promotion of Islamic *syari'ah* is one effort to prove that Pancasila is not based on a materialistic principle [*ibid.*]. According to a proponent of *syari'ah*, Pancasila has been actually a religious ideology and some people in the post-Suharto era of democracy have attempted to change it into a secular ideology [Agus 2006].

One of the main supporters of *syari'ah*, Ismail Yusanto [2006], the speaker of HTI, argued that Pancasila has become an open ideology that can be interpreted freely. Implementing Islamic *syari'ah* can fulfill the principles of Pancasila such as oneness of God, humanity, Indonesian unity, democracy, and social justice. Yusanto argued that it is strange for people to reject a Muslim's belief that Pancasila can be realized by using the Islamic faith. This view was also supported by Amin [2006], who said that Pancasila is not anti-religion but rather gives space to religions—particularly Islam, which he argues is a complete religion and has become a way of life for Muslims for a long time [see also Husaini 2006b]. In his view, because Islam contains teachings that are superior to those of any other religion and is also the religion of the majority, Islamic *syari'ah* can become the



main source of laws in Indonesia [*ibid.*].

Husaini [2006a] may have recognized Pancasila as a historical agreement among leaders of Indonesia, but in his view people are still free to interpret it according to their own values. Husaini [*ibid.*] argued that when independence was declared on 17 August 1945, the state was still based on the Jakarta Charter (issued on 22 June 1945) that contains "belief in God, with the obligation to apply Islamic syari'ah for its followers (*Ketuhanan, dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya*).” For him the proclamation was also a proclamation for Muslims to apply Islamic syari'ah, and Sukarno had also supported the implementation of syari'ah for Muslims in his Pancasila speech on 1 June 1945 [*ibid.*]. Again, according to Husaini, President Sukarno's decree to return to Pancasila and the 1945 Constitution on 5 July 1959, was also a return to the implementation of the Jakarta Charter [*ibid.*]. The selected historical aspects referred to by Husaini were meant to demonstrate that the national leaders allowed the implementation of Islamic syari'ah.

In general, the pro-syari'ahists subscribe to the argument that the Pancasila contains a religious spirit found in the first principle, namely the oneness of God. In a democratic and open situation such that in Indonesia, freedom is understood as the freedom to interpret Pancasila in an Islamic spirit and to enrich it with Islamic syari'ah or even to guide Pancasila by Islamic syari'ah. It is perhaps the reason why the pro-syari'ah supporters tend to see Pancasila as an ideology open for any kind of interpretation, without regard for how Pancasila was meant to be in the beginning. To support these arguments, Amhar [2006] said that in Pancasila or the 1945 Constitution, there were no words prohibiting Muslims to aspire to syari'ah.

Both pro and anti-syari'ah groups actually recognized the importance of religious values, morals and norms in the implementation of public policy. The difference is that those favoring syari'ah want the values to be implemented directly by using state power. In contrast, the anti-syari'ah groups argue that the values and norms must be contested in relation to universal values existing in society. They need to be interpreted along with the universal principle of democracy and human rights developing in the world at the mo-

ment [Ma'arif 2006]. Islamic syari'ah, according to this anti-syari'ah proponent, is best used as an alternative source of ideas (inspiration) and not as the main principle to be implemented in the state. A similar argument, which, however, was not so explicit with regard to the need to discuss religious values as public policy, actually came from pro-syari'ah exponents such as Ma'ruf Amin [2006], who argued that Islam is actually one of the sources for national law in Indonesia. He also said that there are spheres in which Islam can become the source of laws as well as others in which people and experts can pursue their arguments [*ibid.*].

The tendency to discuss syari'ah in public, to a certain degree, has become clearer in the latest developments. Following significant criticism, the movements to promote syari'ah have scaled down their programs and begun to deal with other elements in society in promoting syari'ah bylaws. Those supporting syari'ah seem to accept the reality that politics is an agreement and negotiation among people. In responding to calls from Nationalist and Christian party members of parliament to annul perda syari'ah, DPR members such as Jazuli Juwaeni (PKS) and Ferry Baldan (Golkar) have attempted to clarify that what has been debated is not really about Islamic laws but regulations on general issues that threaten the moral of society such as prostitution, gambling, and alcohol consumption [*Republika*, 21 June 2006]. In line with this argument, Ma'ruf Amin, a head of MUI and considered a representative of the pro-syari'ah voices, said that what people debated as perda syari'ah was not syari'ah per se but bylaws inspired by syari'ah.<sup>28</sup>

The above response only came after many people, including those from the comparatively smaller Christian party in parliament, protested against syari'ah as opposed to the Pancasila state. Some cabinet ministers, national figures, and intellectuals are also worried about the process of syari'ahization and have sought to counter it by revitalizing Pancasila as the national ideology. As explained above, syari'ah bylaws have been promoted by its supporters as part of the Islamic teachings and justified as one way to protect Pancasila from

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<sup>28</sup> Only after the heated debates, to calm down the protests, did one of the MUI leaders, Ma'ruf Amin state that the perda is not perda syari'ah but only rules that have the spirit of syari'ah [*Antara News*, 10 July 2006].

secularism.

This development represents a new understanding to think more rationally about syari'ah. In line with Amin, former State Secretary Minister Yusril Ihza Mahendra, and also former head of the PBB whose party supports the implementation of Islamic syari'ah, has stated that the perda syari'ah is not really Islamic syari'ah. Therefore, in contrast to the previous arguments and rhetoric of pro-syari'ah groups that the syari'ah regulation is the initial step toward changing Indonesia into an Islamic state, he said that the bylaws are only norms based on Islamic teachings, which have existed in society for a long time. In his view the bylaws are inspired by syari'ah and they govern things such as gambling, alcohol consumption, and prostitution, all of which have not been dealt with by the laws of the state. He also said that various Islamic principles, together with international practices and Dutch laws, are the sources of national laws, as seen in the formulation of the Law on Bankruptcy, for example. According to him the government's task is to accommodate values existing in society and to see these reflected in national laws.<sup>29</sup>

In an attempt to end the controversy, the Minister of Internal Affairs made a statement pointing out that the perda syari'ah exists under the authority of the local government to handle social problems, and it is not similar to syari'ah laws or Islamic laws [*Kompas*, 23 August 2006]. The minister commented that the bylaws are only an implementation of government authority given by the central government according to Law No. 32/2004 on local government. He adds that Islamic syari'ah is only implemented in Aceh because this province has been given special status to implement syari'ah at the provincial and regency levels [*ibid.*].

The statements of Amin, Mahendra, and the Minister of Internal Affairs seem to confirm that the role of religions, while accepted, is limited as a source influencing the formation of law and ethical values. Moreover, religions cannot directly institute syari'ah laws or any other religious laws in the context of the Pancasila state. The statement of the Minister of Internal Affairs implies that, except for Aceh, the state cannot accept syari'ah laws as laws orga-

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<sup>29</sup> <http://www.hukumonline.com/detail.asp?id=11242&cl=Berita> (accessed 19 July 2006).

nizing governance. In other words, recent developments show an understanding that the law or public policy issues such as *perda syari'ah* cannot be justified on the basis of religious arguments but on the basis of the necessity and urgency of the regulations in society. Religious values and teachings may be important as a source of law in Indonesia, in particular if it has become customary and therefore a part of people's lives. But these values should contain general, universal, and acceptable rules for all and should be negotiated in the society to produce formal laws applied to the whole of society. To do otherwise, to construct regulations without consultation with society, will only lead to protests. In this context, the complete teachings and rules of Islam, which some assume as readily applicable to society, must be discussed thoroughly if these are to be considered as regulations in Indonesia.

After this heated controversy over *perda syari'ah*, it will be more difficult for *perda syari'ah* to be legalized by local governments since people are more critical of the urgency and the need to adopt *syari'ah* bylaws. Numerous examples have proved that this is the case. In Jakarta, where the parliament is actually dominated by the Islamic PKS Party, the process of drafting and legislating *perda syari'ah* is complicated. The Indonesian Council of Ulama in Jakarta has proposed a comprehensive draft of immorality, but there has been no progress in legalizing the bylaws since parliamentarians and people think there are many other more important issues that concern the capital city. Similarly, NGOs and Islamic and human rights activists are now more vigilant in watching proposed bylaws and drafts in North Sumatra, Depok, Jombang, and Yogyakarta so the scrutiny is considerably more significant.<sup>30</sup> A few years from now, it

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<sup>30</sup> The anti-*syari'ah* groups are in contact with one another to monitor any move from the pro-*syari'ah* groups to introduce *perda syari'ah* in the above cities, districts, and provinces. They use the internet to circulate the drafts of *perda* proposed to the DPRD. Those anti-*syari'ah* campaigners in Depok mobilized protests within society to force the DPRD to invite many groups in to discuss the draft of the *perda* in cities and provinces such as Depok, Jakarta, Yogyakarta, and Jombang, where the civil society groups have grown significantly, the draft of the *perda* will attract strong criticism and cannot be passed before having been debated in public. In Jombang, for example, women's groups and religious NGOs such as NU and various women's forums have arranged strategies to criticize



might be interesting to note that the pro-syari'ah groups will have made little or no progress in the promotion of perda syari'ah.

### CONCLUSION

The debates on the Islamic state are far from over in Indonesian politics. In recent public debates, these were transformed into debates over the implementation of syari'ah bylaws at many district levels. In contrast to the New Order regime, which had banned such debates, the current democratic regime allows the debates to take place, which has helped ease concerns that such debates would threaten national stability. Equally important, this freedom has provided the opportunity for many groups in Indonesia to find consensus on divisive issues such as the implementation of perda syari'ah.

In the debates, widely reported in newspapers, magazines, radio, television, and the Internet, the pro- and anti- syari'ah actors had expressed their concerns and positions. Demonstrations, protests, and petitions also marked the debates. It is interesting to find out that both groups were finally able to compromise and negotiate their positions. The pro-syari'ah groups, for example, changed their standpoint from claiming that the perda syari'ah had been part of efforts to establish an Islamic state to stating that it is actually a part of moral regulations that have existed in society for a long time. Similarly, the anti-syari'ah groups now consider aspects of perda syari'ah as potentially useful, provided this decision is reached through public deliberation and dialogue and agreed upon by the main components of society—both Muslim and non-Muslim.

One important phenomenon emerging from the debate relates to the role of the national ideology, Pancasila, which has been marginalized for some time after the fall of Suharto. It has regained its currency and become a general reference point and a basis of legitimacy for both pro and anti-syari'ah proponents. The pro-syari'ah groups have insisted that their efforts to implement syari'ah is not at odds with Pancasila; indeed it is one way to interpret Pancasila and invest it with a religious spirit or in their words: "to Islamize

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certain chapters in the draft of the antiprostitution bylaw.

Pancasila.” The anti-syari’ah voices claim that Pancasila should be the main reference point for all, including the pro-syari’ah groups, in promoting and implementing their positions. They want to make sure that no groups, particularly non-Muslims, are excluded in the debates and decisions made. To what extent these competing groups embrace Pancasila as a common platform, not just as a tool to legitimate a position, is another matter that should be monitored in the dynamics of Indonesian politics.

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