

## The Existence of Indonesia in Modern Jurisprudence (Fiqh) Perspective

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### Abstract

*The historical route of citizenship relationship life and religion in Islamic world is very fluctuateve. Similarly, Indonesia has experienced ups and downs since the beginning of independence until the reformation era. Even these days there are a number of fundamentalist movements who want to change the life principle of the nation state which has the nation's philosophy of life in the form of Pancasila and the 1945 Constitution as its constitution. Therefore, this paper is going to examine the importance of the nation-state in the life of Indonesian nationhood and fiqh (Islamic law) experts' view on the relationship between religion and the State of Indonesia. The approach used in this study is a conceptual approach (conceptual approach) and historical approaches while the method of analysis used is the productive hermeneutics analysis of Hans G Gadamer. The results of this study indicate that historically, the Prophet had ever built a relationship between religion and state is very good which was proved by the establishment of the "Charter of Medina". That phenomenon has same principle as the idea of founder of the State of Indonesia which established the nation based on the philosophy of Pancasila and the 1945 Constitution, which was the State system development is in conformity with what the Prophet Muhammad in Medina which was never built political agreement based on the Quran and Hadith , but with the "Charter of Medina", known as the "Constitution of Medina". Therefore, modern jurisprudence views Islamic caliphate system not as a religious obligation, but it is historical fact as one of the countries that have built as a result of ijtihad Prophet Muhammad and his companions.*

**Keywords:** The nation-state, the Khilafah Islamiyah, Pancasila and Jurisprudence (Fiqh)

### I. Preliminary

Historically, the existence of the nation state according to Nurcholish Madjid (in Munawar-Rachman, 1995: 589-590) is the result of the change which was proceeded naturally as well as the changes that occurred during the reign of Khulafaur-Rasydin, Umayyads, Abbasids and so on. After the collapse of the Caliphate in Turkey in 1924, the nationalization movement flows smoothly to the nations or Islamic countries who want to liberate themselves from the invaders.

One of the first Muslim-majority nation which successfully proclaimed its independence was Indonesia on August 17, 1945, Pakistan successfully got independence from colonial on August 15, 1947. As in Africa, Libya got the independence in 1951 AD, Sudan and Morocco in 1956 AD and later Algeria in 1962 AD. In Southeast Asia, Malaysia and Singapore gained independence from Britain in 1957M, while Brunei Darussalam year 1984 AD (Yatim, 1993: 189)

The phenomenon of national life system for Muslims became a new challenge because they were freed from the shackles of imperial state system. In other words, the nation-state system offered by the colonists became a new life system for them, so they were feeling forced a bit, but it must be supported because the current reality, a nation must have a multiple order of life. According to Nurcholish Madjid, physiologically each nation has difference, either in skin color, physical form, language, residence or historical growth as a nation. The existence of the nations is a reality which cannot be avoided. Therefore, the development of a state system based on a certain nationality cannot be avoided anymore (Anwar, 1995: 187).

In relation to nation state for Indonesia, one of the results of the National Ulema Council Decision (National Conference) and the NU's General Conference (Konbes) decided that the existence of the Republic of Indonesia (NKRI) with Pancasila as its ideology is legitimate in the eyes of Jurisprudence, even according to the view of Muslim jurists. Thus, all the people and Indonesian Muslims are obliged to obey and carry out the policy of the government which adopts a Republic of Indonesia (NKRI) with Pancasila as its ideology. The results of the General deliberation of Muslim Scholars and NU's General Conference 15-17 September 2012 listed in items 4-6 as follows:

4. Unitary Republic of Indonesia (Republic of Indonesia) is the agreement of the nation (*mu'ahadah wathaniyah*), with the Pancasila as the state principle ;
5. Although Indonesia is not an Islamic State (*Dawlah Islamiyah*), but it is legitimate based on Islamic view. Similarly Pancasila as the state principle, although it is not Shari'a / religion, but it is not contradicted to, even in harmony with Islam, and
6. As a legitimate consequence of NKRI, then all of nation elements are required to maintain and defend the nation's sovereignty (*Risalah, 2012: 78-79*).

Meanwhile, the phenomenon of national life in Indonesia since the fall of the New Order until now it had the opposite course of development, namely the development of political religious movements (Islam) which is often known as "fundamentalists" who want the establishment of the Khilafah Islamiyah (Islamic rule) (Arifin, 2009 : 188-193). One of a number of religious political movements which are the most active is Hizb ut-Tahrir Indonesia (HTI) and the Majlis Mujahidin Indonesia (MMI). HTI and MMI political movement has an agenda to take the fight against all forms of idolatry and pagan symbols such as democracy and the nation-state. Resistance was done with the efforts to replace the symbol or State identity / Pancasila with identity / symbol of Islamic Jurisprudence insight born of the past (Jurdi, 2008: 383-421).

Based on these contradictory problems, the writer formulates the problem as follows: how is the urgency of nation-state in the life of Indonesian nationality? how is the experts view fiqh (Islamic law) on the relationship between religion and the State of Indonesia? Therefore, the focus of study of this paper is to examine these two issues, namely the nation-state importance in the life of Indonesian nationhood and the last view of the fiqh experts (Islamic law) on the relationship between religion and the State of Indonesia.

The approach used in this study is a conceptual approach with concept comprehension of nation-state of Indonesia in the perspective of jurisprudence, while historical approach used in comprehending the background of the historical relationship between religion and state in Indonesia; States nation urgency in Indonesian national life, and the views of experts fiqh (Islamic law) on the relationship of nation-states (Marzuki, 2006: 37-45). The method of analysis used is the hermeneutics analysis of Gadamer's Hans G (in Bleicher, t.th: 114) that is used to build productive interpretation in understanding the dialectic of legal texts and religious phenomena religious political life of Indonesia.

## **II. Theory Framework**

There are number of definitions of the State which are very varied, namely: *First*, the state is defined as the highest organization among the group of people who aspired to unite, live in an area and have a sovereign government. *Second*, Roger H. Soltan found that the state is a combination of agency and authority that regulate and control the problem together. *Third*, Max Weber defined the state as a society that has a monopoly on the legitimate use of physical force within a region. *Fourth*, M. Mac Iver regards the state as an organized association order for a society in a region through a legal system organized by a government which for that purpose it shall be authorized to compel. *Fifth*, *Webster's Dictionary* defines a country as a number of people who permanently inhabit a given territory and politically organized under a sovereign government which is almost entirely free from external control and has the coercive power to maintain order in society. (Ma`arif, 1985: 12). *Sixth*, Wahid Ra`fat defines the state as a large group of people living in a certain area in the hemisphere, which are obedient to a organized government and responsible for maintaining the existence of the community, taking care of all the interests and general welfare (Moses, 1990: 25).

In the conception of modern jurisprudence, most modern Islamic political experts claim that the absolute concept of a state is not found nor explicitly stated in the al-Quran and As-Sunnah. However, both of those sources of Islamic law have already contained basic principles of the way of life in society, nation and state.

In line with the absence of a definite concept of the state, it has given birth to a variety of ideas about the concept of the state in the tradition of Islamic political thought, the more extreme one is Max's statement that made the theory which wants countries abolition and aims to create a society without the state as the last stage of communist revolution emerged (Ma`arif, 1985: 13).

The nation-state is a concept or form of state which got its political legitimation by being a sovereign entity for a nation as a unit of sovereign territory. "State" (or country) is political and geopolitical entity, whereas "nation" is a cultural and / or ethnic entity. The term "nation-state" shows that the both cases (state and nation) as the same thing, and this system distinguishes it from other forms of state ever before. If the nation-state system can be implemented, then it means that the people unite in a single language, culture and values - which are not characteristics of a country that ever existed before. A world in which nation states will also implement the demands on self-determination and autonomy for each nation, which became the main focus of understanding nationalism ([http://ms.wikipedia.org/wiki/Negara\\_bangsa](http://ms.wikipedia.org/wiki/Negara_bangsa), 2012)

From a number of definitions of the above it can be concluded that the elements required for the establishment of a nation are a nation that inhabits a particular area, the abstract institution that was well received by the nation and realized by the power holders, the system is adhered to and regulate hierarchies of power, political freedom to the nation's identity and self-determination, so it does not follow other countries.

Meanwhile, the jurisprudence is literally "a deep understanding to the inner things", while in the terminology, it is the science of the laws of Personality (Islamic law), which is extracted from the practical and detailed theorems. Similar to other Islamic sciences, jurisprudence could be said to have grown since the time of the Prophet. If the "jurisprudence" is limited only to understanding the "law" as it is now commonly understood by people, then the roots of the "law" is very closely related to the powers that be in the role of one of the Prophet himself during the holy apostolic task (treatises), particularly during the period after the migration to Madinah, namely the role as leader of the political community (Medina) and the judges who decide cases (Majid, 1995).

The role of the prophet as a case solver should be viewed as an integral part of its function as the messenger of Allah. As in all religions, the Holy Prophet bring the teachings of Islam with its main purpose which is to reform or renewal and repair (*ishlah*) the condition of the human race. Located in the core of the reform, it is the spiritual aspiration (solely as counterweight worldly aspiration) which is populist (the ideals of justice with a strong spirit of anti-elitism and social hierarchy) and the universal (applicable to all people, in all places and times). As a science about syara'yah issues theoretically, that fikh issues with respect to the afterlife seems to worship (worship) or with respect to the world matters are divided into munakahat (marriage), mu'amalat (various transactions in the community) and 'uqubat (penalty) (Majid, 1995).

While the word "modernity" is derived from the words "modern" and common definition of modern is everything related to life today. The opposite of modern is ancient, and of all things related to the past or stick with the order of life in the past. Modernity is a view held to deal with the present. As well as being the view, modernity is also an attitude to life, the attitude adopted to face the life today. The meaning of modernity, namely the views and attitudes related to life today, mostly influenced by modern civilization (Munawar-Rachman, 1995: 553-554). Thus, modernity is a revival time of the role of the human mind and respect for human values and the fair treatment and egalitarian to human beings, so if used to the terminology of jurisprudence modern means "science of the laws of Sharia that are practical excavated theorems which are detailed and the study process considering the development of contemporary science." From the definition and explanation of the nature of modern science fikh, it seems clear the emphasis of fiqh orientation that is present in response to the problem of human living arrangements with the social, cultural and political (Madjid, 1995).

### ***III. Religious Ideology History of the Conflict with State Ideology***

History of the relationship between religion and state politics in Indonesia are two entities that always cause lasting tensions. The tension did not escape the thought jurisprudence used in construction law jurisprudence in triggering the political level. In this case, the study of fiqh paradigm in finding the ideal format of the relationship between Islamic law and politics in the state has led to polarization in positioning between the role of reason and revelation (Azizy, 2002).

In the political level, the two tendencies concept also occurs, the secular nationalist and religious nationalists. The clash between the secular nationalist stream and religious nationalists takes a relatively long time in Indonesia in designing their country contained in the Preamble to the 1945 Constitution (Halim, 2008). Even attempts to enter 'Islamic law' in the Constitution (Constitution) have appeared before the Republic of Indonesia was officially declared. Long ago, the founders of the State of Indonesia have been arguing about the basic state. Most of them want the basic State of Indonesia is Muslim, while others flow it requires that Indonesia is a nationalist basis. Efforts of compromising were reached when the Founding Fathers agreed that the Jakarta Charter that combines elements of nationalism and religious (Islamic) served as the opening of the state constitution (Nurrohman, 2006: 1-2).

At the time of the founding fathers of this country was going to proclaim the independence of Indonesia, then a sense of objections from residents of the eastern part of Indonesia which are mostly non-Muslims appeared. They worry if the Charter Jakarta approved as State basis, then they, non-Muslims, would be second-class citizens. They even threatened to pull out of Indonesia if it was forced. For it is through wise actions, the Founding Fathers agreed that the first principle of the Jakarta Charter, which states "Ketuhanan dengan kewajiban menjalankan syari'at Islam bagi pemeluknya (*the obligation of running the Godhead Islamic law for followers*)" is replaced with "Ketuhanan Yang Maha Esa (*Belief in God Almighty*)" (Nurrohman, 2006: 2-2).

Ketuhanan Yang Maha Esa (*Belief in One God*) as the first principle added with the other four precepts, known as Pancasila, which later became the basic principle of the State. The existence of the compromise between the nationalist and religious groups have made Indonesian political system not purely a "secular state", but also not become an "Islamic State". In the state system, Indonesia has positioned itself as the Pancasila state which puts all religions equally. All citizens may do their religion and worship according to their religion or belief (Nurrohman, 2006: 2-3).

During the New Order, the implementation of Islamic movements in the level of the state began to fade due to the orientation of the New Order which is sustainable economic development, so that the problems of ideological state did not become a serious concern, even the New Order government has a tendency to make Islamists struck dumb. But since the reform era revolved, the implementation of Islamic discourse grew, for example, some areas in Indonesia producing nuanced Shari'a local regulations, in Sumatra, Java and Sulawesi which are exclusive and elitist (Fanani, 2008: 158). The changes in the state political system of centralized system to a decentralized system has evolved dynamically and conducively. A number of changes to the legislation that became public demands have been accommodated in the amendment of the 1945 Constitution and Law Act. 22/1999 on Local Government Autonomy which was then converted into *Undang-Undang Republik Indonesia Nomor 12 Tahun 2008 Tentang Perubahan Kedua Atas Undang-Undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah* (the Law of the Republic of Indonesia Number 12 of 2008 on the Second Amendment to Law Number 32 Year 2004 on Regional Government) (Fanani, 2008: 159).

Reformation era that provided transparency and freedom of religion superbly utilized by a number of religious organizations which are radical or fundamentalist. One of them is a socio-religious organization Hizb ut-Tahrir Indonesia (HTI) and the Indonesian Mujahidin Council (MMI), both of them want to establish the Khilafah Islamiyah, although they are different in scope (Jurdi, 2008).

Since its inception in 1953 in Al-Quds Palestinian organization Hizb ut-Tahrir has a great ideals, which sustain the lives of Muslims and carry the message of Islam to all over the world. To uphold Islamic values in the society life, Hizb opinionated it had to be done through the state, in this case Hizb emphasizes on *Daulah Islamiyah* or *daulah khilafah* (caliphate daulah) ruled by a *chi* lafah democratically and elected by the people ((Jurdi, 2008: 348).

Hizb ut-Tahrir believes that the main problem of Muslims, including in Indonesia (HTI), to lose its identity as the chosen people is due to the presence or absence of secularism application of Islamic law in all aspects of Muslim life. The cause is the absence of political institutions and unification of Islamic people, ie the *Daulah Khilafah*. Therefore, Hizb ut-Tahrir tried to re-establish the Khilafah Islamiyah through movement and revolutionary political propaganda (*inqilabiyah*), the system changes, not dwell on calls for partial and pragmatic change or simply focus on regime change as well as other groups.

The idea of "the rule of Islamic law and the Caliphate" the agenda of political and religious movement of Hizb wherever located (Ansory, 2012: 24). Thus, the khilafah Islamiyah which is wanted to build is an international one. The idea became the vision of a political movement of HTI to enforce Islamic law for all human beings on the earth through indefinite geographically political power which appropriate word Allah which means: "*Nor We have sent You (Muhammad) but as a mercy to all the worlds*" ( QS al-Anbiya [29]: 107) (<http://hizbut-tahrir.or.id/2012/08/23>). In doing a political movement, HTI mentions the obligation to establish the Khilafah Islamiyah by basing itself on four arguments, namely Al-Qur'an, Al-Sunnah, Ijma 'Companions, and Syar'iyah Qaeda (<http://hizbut-tahrir.or.id/2012/09/05/>).

Similarly, the Indonesian Mujahidin Council as a religious organization that was born through Mujahidin Congress I held in Yogyakarta on 5-7 August 2000 had a vision of a political movement for Islamic law in the lives of Muslims (<http://majelismujahidin.wordpress.com/2008/01/31>). While the target of political movements in general MMI is Indonesian people. For MMI, the most important thing is the enforcement of the sentence of God on Earth even it must sacrifice the unity of Indonesia. Because the MMI, a concept of national unity is meaningless if the union cannot get  $\neg$  Ridla Allah. In other words, according to the MMI, national unity is not based on Islamic law is useless, even by Abu Bakar Bashir, the unity of the nation nowadays is a false (*bathil*) unity of the nation, which did not get Ridla Allah. Even though it has to sacrifice national unity, it is not a problem; the most important thing, national unity could be blessed by Allah (Jurdi, 2008: 410). Thus, MMI has an agenda for Islamic caliphate development, but the scope is not as wide as HTI, it wanted to establish Khilafah Islamiyah in the state region includes Indonesia, Malaysia, Philippines and surroundings.

#### ***IV. Urgency of the Nation State in Modern Jurisprudence Perspective***

Because the Indonesian nation has accepted Pancasila as an ideology and a philosophy of life, as well as the only principle of life in the state, nation and society, the reform movement or the modernity of Indonesia cannot be separated from the values of Pancasila. Pancasila is the modern view of life. The values embodied in the Pancasila, Ketuhanan Yang Maha Esa, Kemanusiaan yang adil dan beradab, Persatuan Indonesia, Kerakyatan yang dipimpin oleh hikmat kebijaksanaan dalam permusyawaratan/ perwakilan, dan Keadilan sosial bagi seluruh bangsa Indonesia. (the Belief in God Almighty, just and civilized humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberation / representation, and social justice for all Indonesian people). All these precepts have historical and cultural roots in the life of Indonesian people long ago. But never before in the history of Indonesia, the country formed the nation life based on systematic values in Pancasila. When the Republic of Indonesia was proclaimed on August 17, 1945, it already had the foundation of Pancasila as a whole. That means that Indonesia will be able to have the confidence to face the life of the present and future as well as possible when using the Pancasila as its foundation. In other words, Pancasila is essentially the view or Weltanschauung modern nation of Indonesia (Munawar-Rachman, 1995: 558-559).

If the Indonesian nation which was one of the former colonies of the Western nations has acquired Western cultural influence, both positive and negative, then the nation should develop Pancasila as the state principle. Additionally Republic of Indonesia grows and thrives in an environment filled with Western civilization or even influence. To be able to grow up safely and fertile, the Pancasila should have the ability to live in such an environment without losing their identity on the one hand, but also tough in facing of others. Pancasila as the modern view is also an open view. Because it is open, the Pancasila will be able to develop vitality and energy dealing with the outside world, especially the Western world. In relation to Western civilization that can be taken which elements to strengthen the life of this nation, and instead consider which elements are in Western civilization had to be abandoned because of adverse nation (Munawar-Rachman, 1995: 558-559).

When viewed from the perspective of jurisprudence on the relationship between religion and the state of Indonesia, the purpose of the State of Indonesia is in accordance with the ideals of jurisprudence who wants to maintain the security and integrity of the country, to maintain order and promote the country to every individual in the country to realize its full potential while providing contribution to the welfare of all (Munawar-Rachman, 1995: 558-559). Borrowing the view Muhammad Arkoun, Indonesia and Pancasila as the state ideology can be said to be one actual instance of the state system which ever built by the Prophet Muhammad in Medina who have some principles, namely socio-political delegation which is known that inside problem setting deliberations consensus and constitutional life that inside of setting the source of authority and power are based on a written document whose principles agreed upon).

Therefore, the amendment of 1945 Constitution that have the same agreement with the famous Holy Prophet in Medina, the Mitsaq al-Madinah (Medina Charter), which among modern scholars is also known as the "Constitution of Medina." (Munawar-Rachman, 1995: 590). Pancasila also emphasizes protection of human rights and the loyalty to the constitution. These principles are never initiated by the Medina constitution as a document which contains, for the first time in history, principles and norm religion states and human values that had not been known previously to mankind. "The main idea of experiment of Medina by the Prophet is the existence a socio-political order governed not by personal whim, but it is not by *ad hoc* principles that can change in line with the will of the leader, but by the guiding principle in the document which instituted the basic agreement all members of society, is a constitution (Munawar-Rachman, 1995: 590).

Similarly, the 1945 Constitution adopted a number of principles that none in it is contradictive to the values of fiqh, such as the principle of unity and brotherhood; principle of equality; principle of freedom; principle of mutual help and advocate for the persecuted; principles of justice; principle of consultation; principles equality law and punishable by law; principle of religious freedom and the relationship between religion; principle of defense and peace; principle amar ma `ruf and forbidding evil; principles of leadership; principles of personal and group responsibility; principles of piety and obedience (discipline). Principles of Jurisprudence also become principle of the Constitution of 1945 (Pulungan, 1994: 86).

Pancasila also has unleashed a reign of political orientation from ethnical system as the practice of Arabian Jahiliyah era to the state system based on the constitution / 1945 Constitution. In the view of Montgomery Watt, the community established by the Prophet Muhammad in Medina is not only the religious community, but also as a political community of the institution derived from the fellowship of Arab tribes. The agencies alliance are the people of Medina and the Prophet Muhammad as a leader, so the role of the Prophet here as messengers and heads of state at the same time (Watt, 1964: 223-225). Although there is unity between the apostles and the function of the head of state, but the formation of the government here is not included in the task revealed to Muhammad even though these activities can be referred to the activities of government, but form of government was simple, and the power was general, covering about the world and the hereafter. As an Apostle, Prophet Muhammad has broader powers than the power of a king to his people. His leadership was a messenger who brought the leadership of the new school, and not the leadership of a king, and his power is the power of an Apostle, not the power of a king (al-Raziq, 1925: 64). In view of Yusuf Musa, Prophet Muhammad activities and his companions in Madinah that have made the country a homeland for them and for all, then it becomes a perfect measure of the Arabs and the Muslims in the country that has established a common standard for a countryexistence. The success of the Prophet Muhammad with the "Constitution of Medina" has become a basic thing to support the progress of the construction of nation state (Musa, 1990: 26).

According to Pulungan, the relationship between religion and state in Medina was built synergically by the Prophet and his people so they can become strong people and stands alone. The capacity of the Prophet in the early days of Islam in Madinah not only has the nature of apostles, but also has the nature of the head of state. Through this historical fact, D. B. Macdonald joined to comment that the first Islamic state established by Prophet Muhammad has laid the political foundation for Islamic legislation. In this case, Thomas W. Arnold said "at the same time as the Prophet is the religious leader and head of state in Medina. However, the state system desired by the Prophet Muhammad was not given a specific, but it is global (Pulungan, 1994: 78).

In the same way, the Caliphate system had been believed as a religious duty by the fundamentalist / traditionalist both HTI and MMI is not true, because the tasks of caliph Abu Bakr to Ali ibn Abi Talib were just plain leadership tasks that had nothing to do with religious obligations , but only dealt with state leadership tasks so that normal development of the system of state for Muslims are not tied to a specific form, most importantly how sharia law could be implemented, so that the system state that adheres Indonesia Pancasila democracy with the 1945 constitution in the container can NKRI justified in principle orientation meets the standards of justice and humanity. In his analysis of Ibn Taymiyya, Prophet Muhammad never appointed a successor or someone who was not His family. That is, the prophecy has ceased with the death of the Prophet Therefore the source of authority and the authority of the caliphs is completely different from the source of authority of the Prophet. Abu Bakr, for example, is a Khalifat al-Rasul (Prophet Substitute) in the continued implementation of the abandoned religion prophet, not create additional. He is not acting as a human being.

The term caliphate itself as the first name of the position held by Abu Bakr is giving people a lot of (people), not directly derived from the Book or the Sunnah. Therefore it does not contain holiness in him, because he was a socio-cultural creation only (Munawar-Rachman, 1995: 591-592).

In Indonesian-like life, the development of nation-state based nation life as practiced in Indonesia is a must as a foundation upholding the study of Islam in Indonesia and enforce the benefit of mankind in general is a major goal of modern legal jurisprudence. Even establishing systems for the Indonesian nation state is an obligation as citizens are diverse as ever exemplified by the Prophet Muhammad who built the "Charter of Medina". This obligations is in accordance with the rules of ushul fiqh states: "*ma la yatimmul wajib illa bihi fahuwa wajib*" (something which is not perfect without him, then that something becomes mandatory held).

## V. Closing

Factually, the Prophet Muhammad had set the man's relationship with God and the relationship between human beings. Historically, the leadership of the Prophet Muhammad in Medina was the need of the country at the beginning of an Islamic journey though the establishment of the Islamic state Madinah merely was the result of Prophet ijthad which the pose are to uphold and support the religious life of Islam. Likewise, Indonesia need the support of national life in supporting the success of the religious life, while the state system that fits in Indonesia is a nation state based on the philosophy of Pancasila and the 1945 Constitution. This development of the country is in accordance to what the Prophet Muhammad did in Medina who was never built state political agreement based on the Quran and Hadith, but with the "Charter of Medina" known as the "Constitution of Medina". Therefore, modern jurisprudence holds that Islamic caliphate system is not a religious obligation, but it is historical fact as one of the country which is the result of Prophet Muhammad ijthad and his companions.

## References

- Abu Zahrah, *Tarikh al-Mazahib al-Islamiyat fi al-Siyasah wa al-'Aqidat*, Dar al-fikr al-Arabiya Beirut, tt.
- Abu Zahrah, *Ushul Al-Fiqh*, Dar al-fikr al-Arabiya Mishr, 1985.
- Al-Bahansawi, Salim Ali, *Wawasan Sistem Politik islam*, Penerjemah Mustolah Manfur, Pustaka al-Kautsar, 1995.
- Ali Abd Al-Raziq, *Al-Islam wa al-Ushul al-Hukm*, al-Qahirat, 1925.
- Ali, K., A. *Study of Islamic History*, Idarah-Adabiyah Delhi, 1980.
- Anshori, Ahmad Yani, *Tafsir Negara Islam*, dalam dialog kebangsaan di Indonesia, Siyasat Press, Yogyakarta, 2008
- Ansory, Siti Nafidah, "Peran kelompok Ideologis dalam Perubahan", , *Majalah Al-Wa'ie: Membangun Kesadaran Umat*, No 142 Tahun XII, 1-30 Juni 2012.
- Anwar, M. Syafî'i, *Pemikiran dan aksi dalam IslamIndonesia*, Paramadina, jakarta, 1995.
- Arifin, Syamsul, *Studi Agama: Perspektif Sosiologis dan Isu-isu Kontemporer*, Malang: UMM Press, 2009.
- Arnold, Thomas W, *The Caliphate*, Routledge and Kegan Paul, LTD, London, 1965.
- Azizy, A Qodri A, *Ekletisisme Hukum Nasional: Kompetisi antara Hukum Islam dan Hukum Umum*, Yogyakarta: Gama Media, 2000.
- Azra, Azyumardi, *Pergolakan Politik Islam*, Jakarta, Paramadina, 1996.
- Yatim, Badri, *Sejarah Peradaban Islam*, RajaGrafindo, Jakarta, 1993.
- Budiardjo, Miriam., *dasar-dasar Ilmu Politik*, Pt. Gramedia, Jakarta, 1989.
- Bukhs, Khuda, *Polics in Islam*, Ashraf, Lahore, 1954.
- Didin Saefuddin Buchori, *Sejarah Politik Islam*, Jakarta, Pustaka Intermedia, 2009.
- Djazuli, H.A., *Fiqh Siayash, Implementasi kemaslahatan Umat dalam rambu-rambu Syariah, Kencana, Bogor, 2003.*
- Elposito, John L., *Islam and Developmnet*, terjemahan, A. Rahman Zainuddin, Bulan Bintang, Jakarta, 1986.
- Fanani, Muhyar, *Membumikan Hukum Langit: Nasionalisasi Hukum Islam dan Islamisasi Hukum Nasional Pasca Reformasi*, Yogyakarta: Tiara Wacana, 2008.
- Gibb, H.A.R dan J.H. Kramerss (eds). *Shorter Eneye lapaedia of Islam*, E.J. Brill, Leiden, 1961.
- Haikal, Muhammad Husein, *Sejarah Hidup Muhammad*, terjemahan Ali audah, Litera Antar Nusa, Jakarta, 1990.
- Halim, Abdul, *Politik Hukum Islam di Indonesia*, Jakarta: Balitbang dan Diklat Depag RI, 2008.

- Hanafi, Hassan, dan Muhammad Abed Al-Jabiri, *Hiwar al-Masyriq wa al-Maghrib*, Kairo, Doriyah li al-Nash Wa al-tauzi, 2005.
- Hitti, Philip K., *History of The Arabs*, The Mic Millan Press, ondon, 1974.  
<http://hizbut-tahrir.or.id/2012/08/23/jejak-politik-islam-di-asia-tenggara>, diakses tanggal 14 Agustus 2012.  
<http://media.isnet.org/islam/Paramadina/Doktrin/Fiqh1.html#Tumbuh>, diakses 04 Oktober 2012
- Josef Bleicher, *Contemporary Hermeneutics; Hermeneutics as Method, Philosophy and Critique*, London: Routledge dan Kegan Paul, t.th.
- Jurdi, Syarifuddin, *Pemikiran Politik Islam Indonesia: Pertautan Negara, Khilafah, Masyarakat Madani, dan Demokrasi*, Yogyakarta: Pustaka Pelajar, 2008.
- Kansil, C.S.T, *Ilmu Negara Umum dan Indonesia*, Jakarta, Pradya Paramiata, 2001.
- Khallaf, Abd Al-Wahhab, *Al-Siyasat al-syriat*, Dar Al-Anshar, Al-qirat, 1977.
- Lambton, Ann K.S., *state and Gverment in Medieral Islam*, Oxford University Press, London, 1981.
- M.A. Shaban, *Islamic History, A.D. 600-700 (A.H.132): A New Interpretetion*, alih Bahasa Machmun Husein, jakarta: Rajawali Press. 1992.
- Ma`arif, ahmad Syafi`i, *islam dan masalah kenegaraan*, LP3ES, Jakarta, 1985.
- Macdonal, DB, *Development of Muslim Theology, Jurisprudence and Constitutional*, New York, 1903.
- Madji, Nur Cholish, "Cita-cita politik kita" dalam Bosco Carvello dan Dasrizal, *aspirasi Umat islam Indonesia*, Leppenas, Jakarata, 1983.
- Madjid, Nurcholish, *Islam, Doktrin dan Peradaban*, Jakarta: Paramadina, 199.
- Marzuki, Peter Mahmud, *Penelitian Hukum*, Jakarta: Kencana, 2006
- Mawardi, Al., *AlAhkam al-Sulthaniyat*, Dar al-Fikr, Beirut, tt.
- Muhammad, Husein, *Islam dan Negara Kebangsaan; Tinjauan Politik dalam Ahmad Suaedy, Pergulatan Pesantren dan Demokrasi*, LKIS, Yogyakarta, 2000.
- Munawar-Rachman, Budhy, (ed.), *Kontekstualisasi Doktrin Islam Dalam Sejarah*, Jakarta: Paramadina, 1995
- Munawar-Rachman, Budhy, (ed.), *Kontekstualisasi Doktrin Islam Dalam Sejarah*, Jakarta: Paramadina, 1995.
- Mus, M. Yusuf, *Politik dan Negara dalam Islam*, Al-Ikhlas, Surabaya, 1990. *Negara Bangsa*,  
[http://ms.wikipedia.org/wiki/Negara\\_bangsa](http://ms.wikipedia.org/wiki/Negara_bangsa) diakses 04 November 2012
- Nurrohman, "Hukum Islam di Era Demokrasi: Tantangan dan Peluang bagi Formalisasi Syari'at Islam di Indonesia", dalam *Makalah Acis Diktis Depag RI*, 2006.
- Pickthal, Muhammad Marmaduke, *The Meaning of glorious Koran*, New AmERICAN Library, New York, 1953.
- Profil Majelis Mujahidin*, <http://majelismujahidin.wordpress.com/2008/01/31/profil-majelis-mujahidin/> diakses 26 Oktober 2012
- Pulungan, Suyuthi, *Fiqih Siyasah(Ajaran, Sejarah dan pemikiran)*, RajaGrafindo Persada, Jakarta, 1994.
- Rahman, Fazlur, "The Islamic of State" dalam John J. D and John L. Esposito, *Islam in Transition, Muslim Pespeltive*, Oxford, University Press, New york, 1982.
- Rapar., JH., *Filsafat Politik Aristoteles*, Rajawali Press, Jakarta, 1988.
- Risalah, No. 35/Tahun VI/1433H/2012, Penerbit PBNU.
- Sirajuddin M, *Pergolakan Konsep Negara Di Aceh (Studi Pemikiran A. Hasjmy)*, Studia Press, Jakarta, 2005.
- Sjadzali, Munawir, *Islam dan Tata Negara, ajaran, sejarah dan Pemikiran*, UI-Press, Jakarta, 1990.
- Suhelmi, Ahmad, *Polemik Negara Islam, Soekarno Versus Natsir*, Teraju, Bandung, 2002.
- Tsaqofiyah Hizbut Tahrir Indonesia, *Jawaban Tuntas Pertanyaan Berulang Seputar Khilafah dan Hizbut Tahrir*,  
<http://hizbut-tahrir.or.id/2012/09/05/jawaban-tuntas-pertanyaan-berulang-seputar-khilafah-dan-hizbut-tahrir> Diakses tanggal 14 Oktober 2012
- V.I. Lenin, *State an Revolution*, New York, International Publishers, 1981.
- Watt, W. Motgomery, *Muhammad Prophet and Statesmen*, Oxford University Press, London, 1964.