



Islamic Nomocracy: from the Perspectives of Indonesia, Spain and Russia

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Article	Abstract
<p>Keywords: Islamic Nomocracy; Science; Religion; Public Spaces.</p> <p>Article History Received: Feb 07, 2023; Reviewed: Feb 08, 2023; Accepted: Apr 11, 2023; Published: Apr 15, 2023;</p>	<p><i>The Indonesian Islamic nomocracy paradigm has a long history and a cultural relationship with the national struggle that coincides with political and religious orientations. The Islamic nomocracy is inseparable from the relationship between Islam and the state rather than being linked to Islamic doctrine and power. This research employed the sociological normative method. It used a philosophical approach from Barbour's paradigm of the relationship between religion and science and also Habermas' thought on religion in public spaces. This research strives to analyze the Islamic nomocratic paradigm pattern prior to Indonesian independence as a crucial stage that influences the next eras, namely the post-independence era, the Old Order Era, the New Order Era, and the Post-Reformation era up to now. This research aims to find the basics and the development of the Islamic nomocracy in the Indonesian legal system. The roots of the Islamic nomocracy legal thought in Indonesia can be traced to the pre-independence era. In the development of Islamic kingdoms, there was a dialog and integration process between the Islamic nomocracy and the kingdom government. After the War of Java, the conflict and independence pattern were formed. Before Indonesian independence, the Islamic nomocracy thought developed into Pan Islamism that tended to be conical to legal formalization through the caliphate system. After Indonesia's independence, some of the Islamic nomocracy legal thought recognized the state as one of the legal systems in Indonesia besides customary law and positive law. Then, Indonesia became a partly-Islamic Legal State with a constant up-and-down relationship with the state. The authors also completed this paper with perspectives of Spain and Russia as both have been ruled under Muslim governance.</i></p>



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INTRODUCTION

The conflicting thoughts on the nomocracy have a long history and a cultural relationship with the Indonesian national struggle. It coincides with both political and religious orientations. The construction of the Islamic nomocracy paradigm, as other legal state concepts in general, stands on the assumption that in establishing power, the determining factor must rest upon norms or place the ideas of legal sovereignty and legal principles as the highest power. Normatively, the idea of the Islamic nomocracy originated from the Holy Qur'an and Sunnah (a compilation of Prophet Muhammad's actions and words) in the form of basic principles that connect the essence of power and the just moral responsibility of humanity. The Islamic nomocracy spectrum is universal. It does not provide concrete boundaries on the forms of government but obtains its basic principles from the Qur'an and Sunnah (Azhary, 1992). Therefore, in the state administrative practice, the Islamic legal system mostly refers to the Madinah Charter as the constitutional instrument to limit the state administration with the law.

The thought study on Islamic nomocracy in Indonesia is often placed as a political science discourse rather than as a legal paradigm. (Budiono, 2021) Thus, the developing paradigms are inseparable from the relationship between Islam and the state, rather than being associated with Islamic doctrine and power (Aulia & Al-Fatih, 2017). The stagnant studies on Islamic tradition that lived during the Islamic golden era contributed to the paradigm tension, especially in its conflicts with legal pluralism in Indonesia. The domination of conflict paradigms in the classical Islamic discourse only develops very slowly. Even, it not stops at the independence approach (Lesmana & Mahyudin, 2018).

This methodological problem becomes even more complex with the general legal thought stagnation in Indonesia (Dimiyati, 2005). Up to a certain point, legal science discourses are still influenced by European legal paradigms that are inseparable from superiority, as well as political, intellectual, cultural, and moral power relationships (Said, 2016). The developed relationship is hegemonic, perceiving certain ideas to be more influential than others. Thus, local cultures are no more than an unrefined stage of civilization. (Prasetyo, 2002) Also, legal norms must still fall under measurable influences and control. Several ideas that constructed ideologies on the marginalization of the Eastern world were developed like so through scientific research institutions to produce various discourses, including inspirational social events that become legal policies and products (Afifi, 2002).

Meanwhile, the Islamic nomocracy paradigm in Indonesia was placed vis à vis with Pancasila (the Indonesian ideology that contains five principles) as the concept of the Indonesian legal state. Ontologically, the narration of Pancasila as the state foundation functions as differentiation as it is not used in any other countries (Surya, 2014). Its power is placed upon its capability to explore several local values and wisdom that are still scattered in different forms.

It was a commitment that was mutually developed by the existing elements with the limitation of tribal, religious, ethnic, and bureaucratic representations as illustrated by the members of the Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI, the Investigating Committee for Preparatory Work for

Independence). The great idea of the Pancasila democracy often misses the social context and the sources of knowledge that developed during the formulation era that was thick with colonialism issues and the ideologies it came with. The atmosphere of the relationship between knowledge and power was developed side-by-side. Thus, knowledge does not always produce science, but it is to maintain the power that is thick with the vision of the colonialism ideology (Lomba, 2003). In the end, the socio-political configuration and the claim of scientific domination resulted in the polarization that has developed up to now.

The portrait of the social polarization was clearly shown since the formation of the BPUPKI by the Japanese government, with the membership representation that mostly referred to Clifford Geertz's trichotomy theory of *santri* (people who strongly practice religion), *priyayi* (Javanese royals), and *abangan* (Javanese people who are culturally, rather than observantly, Muslims).

The religious categorization of Javanese people finally transformed into the basis of political identity variations from before the independence up to now (Subair, 2015). Various terms were used to explain the polarization of social contexts that directly influenced the formation of the state foundation as a basis for developing the legal state. The perspective of the ideological entity was divided into a bipolar political orientation, namely the Islamic political orientation and the secular nationalistic orientation (Symasudin, 2018) or, in other words, the nationalist-religious group and the nationalist-secular group (Anshari, 1997). Then, from the perspective of the Indonesian Islamic political paradigm, a polarization between the substantive-inclusive and the legal inclusive paradigms was formed (Anwar, 1995). Epistemologically, the varied categorization indicated a disharmonic relationship.

One of the interesting research projects about Islamic democracy was conducted by Zuhraeni, which explained that Islamic democracy has contributed to the legal state of Pancasila both in terms of legal thought and its application as one of the legal ideas recognized in the Indonesian legal system with Pancasila as the basic law. Zuhraeni also revealed this social and political constellation and the development of the Indonesian legal state paradigm. Its contribution had tensions due to its characteristics. Pancasila is seen as a prismatic concept (Zuhraeni, 2014), as it collects elements of goodness from various conflicting concepts and turns them into an autonomous concept.

Another important research was conducted by Sarip and Abdul Wahid which presents the pluralistic vision of a Pancasila legal state in the Indonesian state law mission. This research showed that Islamic democracy is one of the visions of the Pancasila legal state which provides freedom of religion. The Pancasila legal state adheres to multiple legal systems such as Islamic democracy, continental (positivism) law, as well as customary and Anglo-Saxon laws to a certain degree. As one of the legal systems that have been acknowledged, Islamic democracy has a clear contribution to this thought (Sarip and Wahid, 2018).

In its development, it cannot be said that state life is always harmonious. As the main building in the Indonesian legal state paradigm, Pancasila is often placed in the corner of the nationality landscape with various discourses, starting from Pancasila as

the state foundation (Basri, Kurniaty and Krisnan, 2021), Pancasila as the source of all laws, Pancasila as the state instrument, and Pancasila as a pillar of the four pillars. In its practice, some people still place Pancasila as a *thagut* (an idol). The Pancasila is the source of all legal sources is rectified after the reformation to become the source of law to harmonize its relationship (Halkis, 2017). This is highly crucial as it influences the ups and downs in the relationship. Apart from that, many issues occurred in the aftermath of the declining relationship after the post-independence era, the Old Order Era, the New Order Era, and the Post-Reformation era.

From the description above, the most fundamental issue of this research is to find the basics and the roots of the Islamic nomocracy in the Indonesian legal system and how to improve the relationship of Islamic nomocracy law in the Indonesian legal system. This paper also provides a comparison of Russia's and Spain's perspectives on Islamic nomocracy. The perspectives of Spain and Russia are very important, where Spain represents the south and western part of Europe, whereas Russia represents the north and eastern part of Europe. Both have been ruled under Muslim governance for several centuries in the past thus they had experiences with Islamic nomocracy.

METHOD

This research employed juridical normative methods (Wardiono et al, 2021) and the library and comparison approaches. This was a literature review that used the qualitative method (Dimiyati & Wardiono, 2004). The authors analyzed the literary materials using philosophical analysis to discuss the Islamic nomocracy in Indonesia, which is a legal discourse that is based on the argumentative relationship between Islam and the state.

As normative-juridical research, the primary data were obtained from theories, opinions, and findings from books and journals that discussed the root of the Islamic nomocracy before Indonesia's independence. It also sought materials that discussed the relationship between Islamic nomocracy and the state, how the state gives acknowledgement, its effects after the independence, as well as how to improve the relationship between Indonesia as a multi-system state and Islamic nomocracy.

RESULTS AND DISCUSSION

The Basics and the Roots of The Islamic Nomocracy in the Indonesian Legal System

1. Indonesian Islamic Nomocracy During the Islamic Golden Period

In browsing through the pattern of the Indonesian Islamic nomocracy paradigm, one can start from the four historical models of the acceptance of Islamic law during the kingdom era. First, the Islamic kingdom grew and developed from the Islamic legal process that lived in the previous society. Thus, the Islamic nomocracy was accepted by society as it was no different from the existing social system. The Samudera Pasai Islamic Kingdom was an example of this model. Second, there was a conflict between customary law and Islamic law. It was the establishment of Islamic law as the state law amid the still-applicable customary laws. In the case of West Sumatera, the conflicts

between Islamic and customary groups in the end reached an agreement through the following statement “*Adat bersendi syara’ dan syara’ bersendi kitabullah* (Customs are based on the sharia and the sharia is based on the Holy Book)”. It means that customary law becomes part of Islamic law so long as it does not violate it. Third, the kingdom model used the customary law that then shifts to using Islamic law after going through an acculturation process due to the influence of economic alliance and domestic interaction. Fourth, the model was developed by the Islamic kingdom in Java using Islamic law as the official source of a kingdom by still giving its people space to use the legal system prior to Islam (Taufik Abdullah, 1987).

2. The Four Models of Islamic Law Encounters During the Kingdom Era

In the typology of Ian. G. Barbour, the most ideal level was the dialog and integration paradigm. The legal paradigm is a product of science and is a discourse on the relationship between Islam and the state as a religious domain that intersects in their own argumentative roles as the source of the norms of life. This model can be developed to achieve an integrative combination. According to Barbour, there are three forms of the integration between science and religion, namely: (1) natural theology, where God’s manifestation arrives in the beauty of the universe that can stir awareness of God's existence, (2) the theology of nature, where religious doctrines are formulated to understand scientific territories that are still deemed as contradictive, and (3) the systematic synthesis which is a type of relationship that can provide a new direction for a more coherent world that is linked to a more comprehensive metaphysical framework.

The integration typology in the Islamic nomocracy thought model during Indonesia's Islamic kingdom period can be categorized into several forms. The thought situation between the Islamic law that lives in society and the process of the legal formulation that turns into nomocracy is categorized into the natural theology and theology of nature typologies. The religious doctrine that society embraced and that is maintained through the social culture has formed a knowledge capable of integrating natural phenomena and God's existence. Religious doctrines are not only defined as having private characteristics, but it has implications for the life of fellow humans. The relationship between nature, humans, and God was harmonized to not stop at the building of knowledge but to also continue up to the level of esoteric embracement. Thus, after the existence of integration, the official process of the Islamic kingdom always takes inspiration from religious rituals with elaborations that were taken from uncontradicted local traditions.

The integration type of the second model that especially occurred in West Sumatera was at the level of systematic synthesis, as it succeeded in systematizing customary and Islamic legal conflicts. Thus, it can provide a new direction that was formulated in the “*Adat bersendi syara’ dan syara’ bersendi kitabullah* (Customs is based on the sharia and the sharia is based on the Holy Book)” slogan.

Then, according to Barbour’s analysis, the third model is categorized as the integration type with the theology of a natural pattern. The transformation of the thought on customary law that turned into Islamic nomocracy happened culturally through acculturation that was developed due to economic interaction. It was also associated with a domestic relationship in the form of mixed marriage. The Islamic

nomocracy that was developed using such a model generally requires strong leadership to endure. The customary law knots that still endure but have failed from being accommodated in the stately life may potentially result in a disintegration effect.

3. The Fourth Model that Happened to Islamic Javanese Kingdoms was Directed to the Systematic Synthesis Integration Model.

In the case of the Islamic kingdoms in Java, the integration that simultaneously happened created more comprehensive and cohesive norms, but they still provided room for certain traditions and religions with Islamic symbols. In the education sector, every citizen is deemed *santri* without worrying about religious identities other than Islam. Any religious expression is deemed *santri* behavior by legitimizing the Sufism-patterned Islamic laws. Thus, even though it was categorized as the systematic synthesis type, it was different from what happened in West Sumatera, where the Islamic nomocracy known as “*syara*” became its customary law with the slogan “*Adat Basandi Syara, Syara Basandi Kitabullah*” (Tradition is based on Islamic nomocracy and Islamic nomocracy is based on Holy Book of Koran).

The influence of the Islamic kingdoms’ power order was also apparent in the use of their kings’ titles that did not use terminologies that were common in the Islamic caliphate system. Local titles were still used, such as the title Maulana in Banten, Sunan in Cirebon, Panembahan in Mataram, and the title Raden was pinned to Javanese Kings in Demak (Taufiq Abdullah & Hisyam, 2003). Then, it was only at the start of the 17th century that the title for Islamic kings in Nusantara (literally meaning archipelago, but is often used to refer to the Indonesian territory, including before the Indonesian independence) used the term Sultan that was linked to the Turkish Ottoman empire through the Islamic monarchy in Saudi Arabia. Sultan Abdul Mufakir Mahmud Abdul Kadir from Banten especially asked a Mufti from Mecca to give him such a title. Also, a Mataram King asked for the same title, thus becoming Sultan Agung (Taufiq Abdullah & Hisyam, 2003). With the relationship between the Islamic kingdoms in the archipelago and the Ottoman caliphate with various political, economic, and theological motives, the Indonesian nomocracy shifted backwards from the dialog and integration typologies into conflict and independence.

The arrival of Islam in the archipelago did not stop at the level of community formulation based on a mutual belief in the forms of the social system and state political institutionalizations. But a new structure of religious thought that highly influenced the relationship between religion and the state was also born. The Islamic intellectual tradition that developed in the 16th and 17th centuries reflected the existence of a pattern in seeking a more intimate relationship between humans and God that symbolized metaphysical-mental esoterism. This trend certainly contradicts the established achievement of Islamic thought, especially in centers of Islamic intellectualism. Thus, when the archipelago's intellectual tradition started to form and it directs to the Sufism pattern, this tradition generally strengthens the frozen era of legal and Islamic political thoughts that were often deemed as the century of decline.

4. The Indonesian Nomocracy after the War of Java and Prior to Independence

An important milestone that influenced the Indonesian Islamic nomocracy paradigm before the independence can be tracked from the works of Nancy K. Florida, *Writing Tradition in Colonial Java: The Question of Islam* (1997) and *Reading Unreading Traditional Javanese Literature* (1997) as well as the work of Michael Laffans, *The Making Indonesian Islam* (2011). These three writings illustrate the great map planned by the Dutch to elaborate the economic imperialism to become knowledge colonialism, especially to cut the Islamic identity of the Javanese people. The bitter experience of the loss in the War of Java (1825-1830) or the War of Diponegoro caused a collective trauma as it created great material losses. It brought immense pain due to the loss of 200.000 Javanese people's lives. It also led to the death of 15.000 Dutches (700.000 among them were indigenous people), and this became a momentum to create a new strategy (Afifi, 2002)

In this phase, in the analysis of Ian G. Barbour, science and religion were at their lowest point as Dutch imperialism entered its lowest level of knowledge, legal, and literary colonialization. The Dutch applied the political policy approach that exploited colonized people through forced cultivation that was applied all over Java and Sumatra Islands. The conflict typology in the relationship between science and religion was developed under an unbalanced knowledge discourse. The claim on the religious-social dichotomy and social class conflicts were created to divide society so that they can be controlled. Public spaces became part of the imperial object. As a symbol of modernity, the Dutch government showed the dark side of modernism as mentioned by Habermas (Ibrahim, 2010). Individualism, social disintegration, inter-civilization conflicts, and the misuse of technologies to destroy humankind were strongly attached to the policies of Dutch colonials.

From 1830 up to the independence era, the change in the colonial political legal policies on the application of Islamic law in Indonesia experienced dynamics. Before, the *reception in complexu* was applied, where Indonesia applied Islamic law with Van Den Berg (1845-1927) as the figure. This theory was criticized by Cristian Snouck Hurgronje (1857-1936) with the *receptie* theory initiated by Van Vollenhoven. This theory principally emphasized that Islamic law can only be accepted after it is accepted into customary law (Alamsyah, 2021).

At this time during the colonization era, the Islamic law's room for the movement was limited. This *reception in complexu* theory clearly showed the most ideal integration typology because legal norms had the aim of controlling social behavior based on the laws and beliefs embraced by society. (Ridwan, Dimiyati, & Azhari, 2001) The interpretation of religious teachings become a discourse on religion in public areas and it was accepted to be implemented together. Political changes finally changed the integration typology to move back into independence through Van Vollenhoven's *receptie* theory which was fully supported by Cristian Snouck Hurgronje.

In Habermas' analysis, Van Den Berg's *reception in complexu* theory was a very ideal relationship between the law and power that was born from the "public use of reason" perspective (Habermas, 2010). Even secular leaders must always consider inclusivity and religious rationality, especially when touching on the concepts of social justice and universal humanity.

The application of Islamic law to citizens with Islamic beliefs as their perspective and way of life illustrates the application of the law at that time that orients towards the substantial achievement of law, namely justice. After the *reception in complexu* theory was no longer deemed necessary and was then substituted with the *receptie* policy that required the absorption procedure of the Islamic law in the customary law, the relational patterns between citizens and power shifted to the direction of conflict. Then, religion no longer had power in public spaces. The Dutch colonial government tried to suppress Islamic nomocracy to simply become the five-time daily prayers, marriage, and hajj. The Dutch colonial government prevented other possibilities of the nomocracy since it was a threat to them.

Entering the shift from the 19th century to the 20th, the awareness of the concept of Islam as part of the national identity was rather broadly developed. The discourse on public spaces at that time was under two great themes, which were Pan Islamism among Muslims and nationalism. The Pan Islamism inspiration developed simultaneously with the return of the Muslim middle class from pilgrimage journeys to Mecca. Due to the great response of the Indonesian Muslims at that time, the Pan Islamism spirit was elaborated to become a mass movement among indigenous Indonesians by establishing the Sarekat Dagang Islam (SDI/Islamic Trade Association) in Bogor (1909), ratified by the Dutch government in 1912 with the name Sarekat Islam (SI/Islamic Association).

At this time, the Islamic nomocratic thoughts grew and developed rapidly as a response to the strengthening of Chinese and European trade with the support of the Dutches which was deemed to be unjust. The pattern of the Islamic nomocratic thought at that time was influenced by the development of international politics, namely the combination of the Turkish Ottoman and the German political association that became a single very solid power (Dijk, 2003, p. 29). Because of that, the Islamic nomocracy paradigm was under the shadow of the Pan Islamism spirit. Thus, it was sensed as the union of all Muslims in one unity and brotherhood (Suminto, 1985) under one political and religious power led by a caliph (Dijk, 2003).

The Islamic nomocracy pattern in the era before independence was also influenced by the strengthening of formal Islamic thought that developed at the start of the founding of SI. It was even more strengthened with its change into the Partai Sarekat Islam (PSI/Islamic Association Party) in 1921 and that developed into the Partai Sarikat Islam Indonesia (PSII/Indonesian Islamic Association Party) in 1930 with the Islamic socialism ideology.

In line with the arrival of Japanese troops that prohibited activities of institutions formed during the Dutch colonial era, PSII was dissolved in 1942 and its members shifted to the Majelis Islam A'la Indonesia (MIAI/A'la Indonesian Islamic Assembly). When the Japanese government promised Indonesian independence, ex-PSII members (Islamic Nationalists) strived for the Islamic socialism ideological foundation through BPUPKI. Some formulations that were the job of BPUPKI were expected to maintain Islam as the state foundation (but not to create an Islamic state) with a socialism-based socio-economic system (Nasihin, 2012).

Meanwhile, the involvement of the religious issue in the public sector has had a great influence up to before Indonesian independence. The Islamic organizations that were active at that time were Muhammadiyah (1912), Persatuan Islam (Islamic

Unity, 1923) Nahdlotul Ulama (1926), Al-Wasilah, and Persatuan Tarbiyah Islamiyah (Association for Islamic Education, 1930). These religious organizations chose the cultural method in developing the Islamic social structure by ignoring the Islamic political approach that orients towards the formalization of Islamic law. The social relationship between political and cultural powers in the Indonesian political stage occurred rather uniquely, especially in developing the public discourse on religion's existence in the state. Some socialist and even communist figures were those who had personal and ideological relationships with Islamic figures, both in the political and cultural sectors. One of the fractions of the SI that became the embryo for the establishment of the Partai Komunis Indonesia (PKI/Indonesian Communist Party) was led by Samaun who was also an SI administrator. Also, H. Datuk Batuah from Sumatra as well as Thawalib and H. Misbach from Surakarta were ulama (Islamic scholars) who were affiliated with Islamic communism. As a figure of Partai Nasionalis Indonesia (PNI/the Indonesian Nationalist Party), Soekarno historically had a personal relationship with H.O.S. Cokroaminoto who was SI's leader whilst he was studying in Surabaya. Soekarno also had a relationship with the Muhammadiyah organization which developed after his exile to Bengkulu by the Dutch. The thought configuration of these figures and their interactions with Islamic groups determined Indonesia's political direction in the end, especially regarding Islam's role in the national political scene.

In Ian G. Barbour's analysis, the relationship between Islamic knowledge and the state before independence experienced irregular ups and down between conflict-independence and dialog-integration. At the start of the 19th century, specifically from the establishment of the SDI up to the fall of the Turkish Ottoman Empire (1924), the Indonesian Islamic Nomocracy was in the form of Islamic law formalization under the envelopment of the Islamic caliphate. During this period in the 1910s, the relational typology between science and religion was colored with the conflict and independence nuance between the believers of the Islamic caliphate concept and the Muslim political representation (SI) with the secular legal norm that was represented by the Dutch government. But during this period, the independence-patterned thought emerged due to the strengthening of the Islamic discourse as a natural bond in the sense of nationalism. It seemed that this symptom was associated with the strengthening of social support towards SI. In the cultural context of Javanese communication, SI succeeded in becoming a symbol of the Islamic and national identity.

This symptom faded along with the increasing participation of royal Muslim indigenous people (*priyayi*) in the education systems managed by the Dutch. Educational institutions such as Osvia (*School tot Opleiding voor Inlansche Ambtenaren*) or the Educational School for Indigenous Employees and Stovia (*School tot Opleiding voor Inlansche Aartsen*) or the Educational School for Indigenous Doctors and other public schools never taught Islamic knowledge. Because of that, many alumni of those schools were alienated from their religion. This influenced their future political choices. This was where there was a shift in the role of SI and the support it obtained. It was originally a symbol of the struggle of the indigenous people, Muslims, and nationalistic groups. But then, it was no longer a political choice for those with Dutch education (Taufiq Abdullah & Hisyam, 2003).

According to Habermas' analysis, SI's position at that time was categorized as the third position in placing religion as an important thing, as there was a difference between the informal and formal public spaces (Supartiningsih & Siswomiharjo, 2012). In the informal public space, religious people were free to express their beliefs using their religious language. Then, those who were not part of the religion were demanded to work together and try to understand their religious language. Next, in formal public spaces, communication was used with rational argumentation. The choice of words that are usually used in religious traditions must be transformed into rational expressions that can be understood by those with secular ideologies. The conversation developed by SI at that time was an informal discourse in the scope of the Muslim community as opposed to formal discussions in parliamentary institutions that were still non-existent at that time.

Post-Independence Nomocracy and the Improving Relationship between the State and Islamic Nomocracy

After the Independence, the Islamic nomocracy became a state legal norm after going through a long process with various forms of Islamic relationships, not only relationships with customs but also those with other religions. The best interaction was during the war of independence, where the relationship between Islamic nomocracy and the state was harmonious. Muslims allowed Islamic nomocracy to not be fully applied with the elimination of the sentence "The obligation to apply the Islamic sharia (Islamic nomocracy) for its believers" in the Jakarta Charter due to protests from non-Muslims from the east of Indonesia.

The discourse on the Islamic nomocracy as a legal paradigm is part of the Indonesian legal system that in general has issues with the Islamic approach as a religious doctrine. The concerns and the regular confrontation between religion, government, citizens, and cosmology in the contemporary conception were encouraged by scientist Ian G. Barbour (Lesmana & Mahyudin, 2018) to create his work entitled "When Science Meets Religion: Enemies, Strangers or Partners?" which mapped the perspective on the relationship of religion into four typologies, namely conflict, independence, dialog, and integration. These typologies are analytical benchmarks to know the development of the Islamic nomocracy paradigm in the context of the relationship between science and religion. Then, the indicators of these four typologies are:

- a. The conflict typology is on two extremely opposite poles.
- b. The independence typology is Barbour's step-forward to prevent conflicts, by separating these into different domains.
- c. The dialog typology emphasizes pre-assumptive, methodological, and conception similarities, as opposed to independence which emphasized differences.
- d. Integration is differentiated into three different versions, namely, natural theology, theology of nature, and systematic synthesis (Santi, 2018).

The religion and state approach experienced changes but it discovered some hope with the development of Jurgen Habermas' critical legal thought. Habermas' perspective on law and morality opened the philosophical road of modern societies in

securing the legitimization of legality based on the system of rights. Through his book "Between Fact and Norms" (1992), Habermas' conceptualization indicated that the law is linked to morality, moral norms, and laws that orient towards resolving issues on social integration in life. Moral norms and the law are differentiated by the different levels of institutionalization and formalization (Deflem, 2013).

Moral norms have an upper hand as it is embedded in the community's life, even though it lacks coercive power and law enforcement. Apart from succeeding in reconstructing modern law in its relationship with morality and rights, Habermas continued his thought that linked the law and politics in the democratic regime by supporting the deliberative democracy concept. Deliberative democracy is the antithesis of liberal democracy. Habermas viewed that the foundations of liberal countries try to protect basic rights such as the freedom of religion, but at the same time demand all citizens to justify their political choices to be independent of their religions (Sunarko, 2010).

In Indonesia's post-independence history, there are ups and downs in the relationship between the state and Islamic nomocracy. The first tension happened when the Aceh province was combined. This ignited resistance in Aceh up to the rule of President Susilo Bambang Yudhoyono when the peace agreement was made. This agreement gave Aceh special autonomy and this province applied Islamic nomocracy in the form of Aceh Qanun (regional regulation).

Another strain happened during the rebellion of the Darul Islam/Tentara Islam Indonesia (DI/TII or the Indonesian Islamic Army) when the state slowly approached the Nationalist-Religious-Communist ideology deemed a deadly rival of the Islamic nomocracy. This rebellion had been quenched. During the New Order Era, strains happened when Islamic nomocracy was deemed to threaten Pancasila.

These up-and-down relationships constantly happen. Slowly, the state adopts Islamic nomocracy as one of the acknowledged legal systems. The acknowledgement and adoption are urgent, considering that many Muslims desire the application of the Islamic nomocracy that is vital in worship, such as sharia banks, hajj, *waqf* (donation of assets for charitable purposes), etc.

The post-independence perspective views that the relationship between religious groups and the state causes tensions. To bring peace to these tensions, Habermas regards the importance of religion in developing public rationing that is active during encounters with other religions, modern science, and the legal state. Religion needs to develop an epistemic attitude when facing other religions, accepting the authority, and agreeing with the legal state's premises that are based on profane morality (Menoh, 2015).

There need to be efforts to improve the relationship between Islamic nomocracy and the state, because, in essence, Indonesian Muslims accept the state and the Pancasila ideology. The premise of this acceptance was proven when Muslims became the backbone of the struggle for independence and they accepted the elimination of the sentence "The obligation to apply the Islamic sharia (Islamic nomocracy) for its believers" in the Jakarta Charter.

Accommodation and recognition can be viewed from the ethical-moral point of view. The law is valid in the viewpoint of prophetic law, namely laws containing ethics and missions. The ethical mission encompasses all stages and phases of law from the substance, methods, and approaches. It especially contains the purpose of the law, namely humanization, liberation, and transcendence (Triwahyuningsih 2019). The relationship was improved with the acknowledgement of the Islamic nomocracy into several crucial things, one of which was by applying it as one of the legal systems in Indonesia's legal multi-system.

The source of tensions is when Islam and its nomocracy are contradicted by Pancasila or the positive law. The total elimination of Islamic nomocracy and the formation of a fully secular country is impossible, considering that Indonesia is a plural country with many religions, tribes, and customs. The acknowledgement of the Islamic nomocracy that only applies to Muslims as well as the acknowledgement of customary laws for each tribe and customary group apart from the national legal system is the key to harmony in the life of Indonesians and the state of Indonesia.

Islamic Nomocracy in the Perspective of Modern Spain

Islam and Muslims have profound roots in Spain, especially in South Spain. The long inheritance of Muslim governance for eight centuries has left monumental cultures, habits, arts, and works. The bittersweet memories between Spain, Muslims (called the moors) and Islam still has traces in the minds and hearts of Europeans.

After the Conquistador Era in 1492, Spain gained an extensive colony in the American continent and other parts of the world including the Philippines. Spain has formed an empire as opposed to a small kingdom. But the behaviors of the Spanish were inspired by the feeling of being threatened by the Moors. Spain was so busy fighting the Moors due to this feeling of being threatened. It did not let the existence of a strong kingdom of the Moors in North Africa that allied with Ottoman Barbary (pirates). The feeling of being threatened was the root of Spain's aggressiveness for centuries in North Africa and other parts of the world. In the modern era, this feeling inherited a type of profound Islamophobia.

According to Laura Cervi, in the context of the development of populism and Islamophobia in Europe especially in Spain, Islamophobia can be divided into two types. First, "banal Islamophobia," which is a bad and distant perception that is closely related to anti-Islam (foreign) sentiments. This perception grows from feelings that Westerners are different from Muslims and their stereotypes about Muslims – in their physical appearance, dress, daily habits, and religious beliefs. Muslims are seen as deviating from what is considered "normal" in the native community, so there is emotional distance and Western perceives them as a threat. In this sense, "banal Islamophobia" seems to have its roots in Orientalism. Second, "ontological Islamophobia," namely the perception that views Islam as an external threat, sees Islamic civilization as monolithic, and a threat to the democratic order of Western society (Cervi, 2020).

The rhetoric of hatred and fear of Islam and Muslims in Spain, and in the West, can generally be described in the following popular expressions about Islam as a monolithic religion (Farkhani et al., 2021). A lot of Islamophobic rhetoric today tries to vilify Arabs in particular. However, not all Muslims are Arabs, and not all Arabs are

Muslims. Arabs are people who speak Arabic, share certain common cultural traditions, and claim the same Arabic identity (Kumar, 2010).

Geographically speaking, the Arab world is traditionally divided into two parts (the East and the West of the Nile River): the Maghreb or the West consists of Morocco, Libya, Algeria, Tunisia, Sudan, etc., and the Mashreq or the East which includes Egypt, Syria, Lebanon, and all the Eastern countries, but it does not include Iran. Due to linguistic and cultural differences, people from Iran and Turkey are not considered Arabs. In short, Islam is practiced by a lot of people with ethnical, linguistic, national, cultural, political and economic differences. However, the following expression describes the Muslim view, which is essential (Rodinson, 1979).

Apart from Islamophobia, tolerance and acceptance towards Islam and Muslims have also developed. Thus, Islamophobia is not a behavior of most of the Spanish. There is a decreasing feeling of being threatened and there is less Islamophobia. According to the European study conducted by Goodwin et al. (2017), the majority of the general population is against migration flows between Muslim countries and Western countries. Moreover, certain research shows that Muslim culture tends to be excluded from public policies and is an object of concern for European political systems (Elahi & Khan, 2017). Overall, European data on the presence of social rejection towards Muslims and their religion reported the following prevalence: 31% in Portugal, 24% in Ireland, 19% in Spain, 17% in the United Kingdom, 13% in the Netherlands, 12% in France and 8% in Germany (Pickel & Öztürk, 2018)

This decrease shows that Islamophobia is not an extensive trend in Spain, along with the elimination of the feeling of being threatened. This decrease marks a new round of reconciliation and accommodation. The process of accommodation of Islam in Spain is based on the Constitution of 1978, which guarantees the freedom of religion. Regarding Islam, the Cooperation Agreement signed in 1992 between the State and the Islamic Commission of Spain brought with it a formal recognition of the practice of the Islamic faith (Lems & Contreras, 2023).

Thirty years later, the sole interlocutor appointed by the State sought the pursuance of compliance with Islamic religious rights. In various regions other actors have engaged in claims, making for rights that include, among others, the access to cemetery space for Islamic burials and Islamic religious education and halal food in publicly funded schools (Mazarío & María, 2018).

Regarding Islam, the process included: firstly, a symbolic recognition of Islam as a “deeply rooted” faith in the country; secondly, the creation of the Islamic Commission of Spain (CIE, in its Spanish initials) as the representative and sole interlocutor of Muslims in Spain; and, thirdly, the negotiations and signature in 1992 of the so-called Cooperation Agreement between the State and the CIE, i.e., a law with a broad set of provisions allowing Muslims to practice their faith (Astor & Grier, 2016).

These provisions include the recognition for civil purposes of Islamic marriages; the establishment of places of worship; religious assistance in hospitals; halal food and Islamic religious education in publicly funded schools; cemetery spaces for Islamic burials. This negotiation process between the State and Muslims in Spain took place prior to the arrival of migrant workers and their families from North Africa. Further, the men who negotiated the contents of the Cooperation Agreement were former

university students born in MENA (Middle East/North African) countries, who had decided to stay in Spain after graduation, as well as people born in Spain, who had embraced Islam at a later stage in their lives, and who formed part of a Spanish Muslim elite at the time of the negotiations at the end of the 1980s and in the early 1990s (Salguero & Siguero, 2021).

As regards Spain, it was the government that took the initiative to accommodate Islam and propelled the establishment of a single Muslim representative body, i.e., the Islamic Commission of Spain (CIE). Based on Law 26/1992 of November 10, the CIE has both representative and administrative tasks, which include the granting of formal recognition of local faith communities, which is necessary to be entitled to the application of rights under the Cooperation Agreement, as well as the application and control of slaughter conditions concerning halal food (Lems, 2021); in addition, the CIE has the right to appoint Islamic religious education teachers at publicly funded schools. To carry out its tasks and for “institutional strengthening”, the CIE receives state funding, which for the years 2018, 2019, and 2020 amounted to EUR 330,000 per year (Fundación Pluralismo y Convivencia (Funding Convention on Pluralism), 2021).

In terms of nomocracy, Muslims and Islam obtained acknowledgement towards basic nomocracy in the form of legal regulations that accommodate the Islamic nomocracy in the affairs of worship animal slaughter, and halal food. This situation will worsen when triggered by attacks from foreign organizations such as Al Qaeda and ISIS. Even so, it will not dramatically increase Islamophobia. The acknowledgement of this basic nomocracy is a great development in Spain compared to the previous eras.

Islamic Nomocracy in the Perspective of the Modern Russian Federation

The Islamic nomocracy is officially noted to influence Russia through Volga-Bulghar. This Volga Bulghar Kingdom was famous as the first Islamic country erected in the Russian region. The presence of Islam in the region has raised the name of the ruler of Volga Bulgaria and was reinduced by the relationship with Baghdad. The Islamization of the Bulghar society is relevant to the role played by Ahmad ibn Fadlan, the ambassador of the Abbasid government based in Baghdad (Halim et al., 2018) to the Ruler of the Volga-Bulghar.

Fadlan was entrusted as a member of the delegation sent by Baghdad to Volga Bulgaria; thus, his record was an official note of the delegation. This delegation was led by Sūsan al-Rusi (Susan the Russian), while Ibn Fadlan acted as a secretary to the delegation. The delegation was also accompanied by the Baris, a Bulghar (a native) as a travel guide to Volga Bulgaria. Initially, the delegation was also accompanied by the *fuqaha'* (Islamic jurists), preachers, *mullahs* (Islamic priests) and merchant groups but only a few people continued to travel to Volga Bulgaria, i.e., Ibn Fadlan, al-Rusi, brother-in-law to al-Rusi, two Turkish slaves, a Turkish named Tekin, and another travel guide named Qalwas (Fadlan, 2012)(Babich et al., 2007).

The Russians at that time landed on a place known as Saqaliba (The Slavia) and Volga-Bulghar was a part of the Greater Slavia Land (Saqaliba al Akbar) plain. The Greater Saqaliba also included the Khazar land inhabited by Turks (who observed the Jewish religion). He also notes how the delegation played the roles of teachers, preachers, and counselors to the Bulghar community. They also became a reference to the Bulghar leader to rule Volga Bulgaria with Islamic nomocracy.

In his treatise, there was a Russian that became a delegate, known as Susan al Rusi (also known as Susan al Saqaliba). This showed that there has been a Russian that embraced Islam in the 9th century who lived in Baghdad and became a delegate to Volga-Bulghar. The acceptance of the Volga Bulghar king and the people of Islam without war also strengthened the argument that in that century, there were already Muslims in the Volga Bulghar land. Here, Islam was already acknowledged by Russians, both from within and outside of Volga Bulghar (Fadhlan, 1996). Volga-Bulghar Russians were the first to adopt the Islamic nomocracy as their philosophy, rules, and government.

Kipchak Turks who also lived in the Volga lands accepted Islam from their neighbors and they experienced step-by-step Islamization. Even though the Bulgars were originally pastoral nomads, they developed a flourishing urban civilization. Bulghar and Kipchak Turks had strong ties with the Muslims of Arabia. This led to the gradual conversion of their elite and their people to Sunni Islam during the early fourth/tenth century, and in 308/920 AD (Golden, 1992).

Their confederation Bulghar-Kipchak ruler (King Almis) officially accepted Islam as his religion. The Volga Bulghar tribal federation comprised many non-Bulghar, especially Turkic elements, Slavic and Finno-Ugric tribes, and they assimilated many groups. As a result, the new Muslim Volga-Kipchak Bulgaria was born. This development was not a mere historical curiosity. Although the Mongol campaigns swept the Bulghar state, the Bulgars' conversion to Islam paved the way for a flourishing Islamic culture and nomocracy in what is now Tatarstan in the Russian Federation (Mako & Simonsohn, 2020)

Several years after the official conversion of Volga Bulghar, Kievan Rus accepted the teachings of the orthodox. It means that there were three confederations in the land of Russia with varying religions, namely the Khazar Turkish confederation that embraced Judaism, the Kievan Rus confederation that embraced Orthodox Christianity, and the Volga Bulghar confederation that embraced Islam. During the Mongol disaster Era, the Volga Bulghar Slavians, Kipchak Turks, and Kievan Rus were defeated and they incorporated the area of the Golden Horde Mongol Empire (Schamiloglu, 2007).

Flexibility and tolerance of the Hanafi Madhab (school of thought) in Volga Bulgaria allowed Muslim religious leaders to accept and acknowledge local traditions and rituals which had existed before the arrival of Islam, which means that the Islamic nomocracy was heavily influenced by tradition. According to some historical sources, wars between Volga Bulgars and the proto-Russians (Kievan Rus) were neither religious nor ethnic conflicts, but they were solely driven by economic and political goals (Rorlich, 1986).

From the 13rd to the 15th centuries, Volga Bulgars and the proto-Russians were both made subject to the Golden Horde, leaving part of Kievan Rus (the Muscovy Rus) established as Mongol, a vassal state (Hitchins, 1997). Indeed, this period can be regarded as the second stage in the history of Islam in Russia. The Golden Horde became Muslim Empire with the official conversion of Berke Khan. It became a multi-ethnic and multicultural political entity that was ruled by Khans at the top of the nomadic military hierarchy (Becker, 1986).

In the early 15th century, it disintegrated into several independent Muslim Khanates (Crimean Khanate, Kazan Khanate, Astrakhan Khanate, Nogai Horde and Siberian Khanate). As a result, Islam dominated a huge area of what is now Russia's territories until these Khanates were conquered by the Russian Empire (known in early years as Muscovy Rus) in the 16th century (Yemelianova, 1999).

Sakwa quoted from Hunter pointed out that Moscow's policy reflected the character of the Russian state and its ideology. The concept of Russian statehood and nationality emerged during the reign of Ivan the Terrible when Russia began its expansion into Muslim territories. One of the most important and deeply rooted aspects of Russian statehood was the legacy of the Byzantine Empire where a merger of church and state functions used to be also observed. In Russia, this concept was broadened even further merging religion, ethnic affiliation and nationality. Integration of Muslim countries disrupted this ethnic and religious unity. The preservation of its Orthodox Christian character required the assimilation of Muslims, which would ensure religious and national homogeneity inside the developing empire (Sakwa, 1993)

The Toleration of All Faiths Edict of 1773 permitted Muslims to practice all their traditions for the first time in the era of Russian imperialism. This edict also banned religious persecution. As a result, the Muslim community started to be gradually integrated into various power structures. These reforms also resulted in the lifting of some restrictions on Muslim trading activities, the construction of new mosques and religious schools, as well as the removal of all the restrictions on Islamic literature (Ruble & Arel, 2008).

Such freedoms were finally suppressed during the Soviet Union era. Muslims could then regain their freedom in Russia after the dissolution of the Soviet Union. Many parts of the Soviet Union with a dominant Muslim population obtained their independence as Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan, etc. Meanwhile, many others still became part of the Russian Federation as Tatarstan, Dagestan, Chechnya and others (Mosses, 1992).

According to an authoritative study conducted by the Arena research center in 2012, the total number of Muslims in Russia was 9.4 million, or 6.5 percent of the population. It must be noted that the security situation in Chechnya and Ingushetia precluded the inclusion of their populations (around two million) in the survey, and, in addition, there are some other unaccounted-for groups of Muslims, such as unregistered migrants in large Russian cities. Thus, some scholars estimate the total number of Muslims at fourteen million (Pankin, 1996). However, there is little sense in seeing Russian Muslims as a monolithic block of people defined by their shared religious identity; nor do we have any evidence to suggest that they tend to form and mobilize coherent political alliances across Russia or within the borders of their own homelands (Giuliano, 2005).

As elsewhere, Russia's Muslims have historically been and remain religiously divided by boundaries that run within Islam, such as between Sunnis (around 88 percent) and Shia (10 percent), between different Islamic legal schools of Hanafi' and Shafi', and between different Islamic orders and movements (Hahn, 1991). No generally recognized centralized authority exists within Russian Islam, despite ardent attempts and at times fierce competition among some clerics to create it (Rubin, 2018).

Muslim identities and their perceptions by non-Muslims in Russia are complex, fluid, and shaped by ever-changing interactions of historical legacies of pre-Soviet and Soviet developments by local cultures, in particular languages; by external influences, such as international Islamic organizations and transnational Islamic movement; by demography, in particular as far as the post-Soviet generations of Muslims are concerned (Čech, 2022); by urban and rural environments; by new trends in gender relations; as well as by political conflicts and government interventions (Karimova, 2016). As one of the most significant large-scale factors, many scholars have pointed out the different environments in which Muslims engage with and construe their multifaceted relationships with Islam in its different forms (Pilkington & Yemelianova, 2016)

CONCLUSION

The paradigm of the Indonesian Islamic nomocracy is a thought on the relationship between Islam and the state that was linked with the national struggle's historical root. It coincided not only with a political but also with a religious orientation that impacts the pre- and post-independence Law. Because of that, the research on the Indonesian Islamic nomocracy must be traced back to the period of Islamic Kingdoms' development in Nusantara up to before the Indonesian independence and during colonial rule and after the independence. The state recognized Islamic nomocracy as one of its legal systems and even adopted some Islamic nomocracy in the positive law. In Spain, Islamic Nomocracy was highly influenced by the feeling of being threatened by Muslims and Islam. In the long term, this triggered Islamophobia-based policies. But the decreasing Islamophobia makes Islam and Muslims return to obtain more than their basic rights according to the new Spanish law (basic nomocracy). In the case of Russia, policies were influenced by Russia's position as a conquerer by attempting to assimilate minorities. But they failed. In the 18th century, Muslims' rights to obtain Islamic nomocracy were recovered. But the situation worsened during the Soviet Era. In the Post Dissolution of Soviet Union Era, Muslim minorities were divided into various categories, genders, ethics, beliefs, and schools of thought in frame of autonomy.

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