

CONSTITUTION AND DESIGN OF THE RULE OF LAW BASED ON JUSTICE

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ABSTRACT

The constitution and the state has a very close relationship, the constitution is supporting the establishment of a state, even the identity of a country. Thus, the Constitution certainly will have a distinctive color pattern in accordance with the noble values espoused nation. It required a leadership figure who has run the rule of law. The Constitution into a document that is very important in order to meet those needs, as well as set the ground rules, in it also regulated how to run it. The concept of the State Law of Indonesia is a blend of two concepts rechtstaat and the rule of law. Previously, the concept of state law in Indonesia is more directed to rechtstaat characterized by the Civil Law, then with the name of the State of Law Pancasila, which is precisely in the new order and before the amendment of the 1945 Constitution, and became state law democratic reform period to the present. Through this Constitution, may be an idea of what the legal system is adopted, development of democracy, to the concept of governance, compliance aspects of justice as well as the division of power in the state. In this study, the issues to be discussed is how the Constitution are ideal in creating legal state that can deliver justice? How to reduce weakness from welfarestate concept in the process of developing of rechtstaat and justice? How redesigning Constitutional theory that can accommodate a blend of a democratic system, divinity and justice?. The approach method used the doctrinal legal research, including historical approach.

Keywords: Constitution, Design, Justice, The Rule of Law

A. INTRODUCTION

Talking about the State could not be separated from discussing human, community or nation. Nation states built through a set of men who agreed to unify about vision and the desire to live in a shared political system. While on the other hand, they also agreed to erode their individual rights in order not to clash with the rights of others. That is why human beings as individuals can always be flexibly put himself in the group. Man himself is referred to as social beings, or even as a political human being (zoon politicon). However, the problems then arise when groups of people are running realizing the vision and objectives.

In the process of his journey organizationally and politically, there is often a difference, be it due to differences in views and disagreements due to the erosion of individual rights that occur unfairly. A natural thing to do, because not contain many individual communities? Not one or two people. Community of nations, consists of several groups and elements that support each other and merge into a single role that political system will be run together, agreed in order to achieve a good cause, the welfare, economy and culture. Therefore, pouring a collective agreement into a binding contract both written and unwritten (which admittedly has become a habit or convention) is a necessary thing to do. The deal was called "Constitution". Constitution and the State has a very close relationship, the Constitution is supporting the establishment of a state, even the identity of a country. Thus, the Constitution certainly will have a distinctive color pattern in accordance with the noble values espoused nation.

Constitution has evolved so rapidly in line with the dynamics of human needs. States that at the beginning of its appearance only a city state has evolved from time-to-time to arrive at the concept of the welfare state at this time. Development of concept of the State has begun even since the days of the ancient kingdom of Babylon, until during the Greek, Roman and then spread to mainland Europe today. However, the concept of the State in the past, better known in the kingdom, Empire (dynasty) putting the power lines on the absolutism of the king. It was once also apply in some regions of Europe.

Although the trip the next state, absolutist monarch slowly eroded through restrictions of power in the State, this does not directly eliminate the figure of a "king" (the personification of absolute individual) in a State. In fact, there are still countries in the world that uses the figure of a leader should "king" in his country, even though the concept and its name has been modified in such a way to suit the development needs of today's modern state.

Likewise with the Constitution which is also experiencing rapid development. The concept of law in the past, starting from the habits of people, in later stages requires certainty (certainty of enforcement) creating the observance of these habits. It required a leadership figure who has run about rule of law. The Constitution document that is very important in order to meet those needs, as well as basic rules, in it also regulated how to run it. Basically, according to the writer, the forerunner to a constitution has

been around since people have a desire to form a community within the scope of the region politically and has a rule of law binding (in the form of state, royalty, or a community of other nations that have not been calling itself the state, but it has a leader or a figure regarded as the ruler). However, the conditions at that time still using the draft constitution simply and most importantly govern how power will be executed.

Indonesia itself, through the provision of Article 1 paragraph (3) of the 1945 Constitution. stated that Indonesia is a country of law, which is then reinforced by Article 28, first paragraph (5) of the 1945 Constitution (describes the concept of the Rule of Law and Democratic embodiment Indonesia) is to uphold and protect human rights in accordance with the principles of a democratic constitutional state, the implementation of human rights are guaranteed, regulated and set forth in the legislation".

The concept of the State Law of Indonesia is a blend of two concepts *rechtstaat* and the rule of law. Previously, the concept of state law in Indonesia is more directed to *rechtstaat* characterized by the Civil Law, then with the name of the State of Law Pancasila, which is precisely in the new order and before the amendment of the 1945 Constitution, and became state law democratic reform period to the present. Thus, it is clear already that the Constitution has a position that is very important for a country. The Constitution also would be the basic rules of how the country will be run. Through the Constitution, we can see an overview of what the legal system is adopted, development of democracy, until concept of governance, compliance aspects of justice as well as the division of power in the state.

B. THEORY

The concept of the Rule of Law

- State of Law *Rechtsstaat* concept: developing in the European region including Continental pioneered by Immanuel Kant, Paul Laband, Julius Stahl. Characteristic of *Rechtsstaat* is a concept of the State Law;¹
 - 1) Recognition of human rights (*grondrechten*);
 - 2) The existence of the separation of powers (*Scheiding van machten*);
 - 3) Governance based on law (*wetmatigheid van bestuur*); and
 - 4) Judicial Administration (*administratieve rechtspraak*).
- The concept of the Rule of Law The Rule of law: growing region of Anglo-Saxon and Anglo-American and pioneered by AV Dicey. The concept of Rule of Law has the following characteristics:
 - 1). Rule of Law (Supremacy of Law);
 - 2). Equality before the law (Equality before the Law)
 - 3). The principle of legality (Due Process Law)
- According to Sri Soemantri, There are four elements that must be met in the concept of the Rule of Law, namely:²
 - 1) That the government in carrying out its duties and obligations should be based on law or regulations;
 - 2) The guarantee of the rights of human (citizens);
 - 3) The division of power in the state;
 - 4) The supervision of the justice agencies.

Constitutional Theory

a) Definition of the Constitution

- The Constitution is derived from the French language (*constituer*) which means form. The use of the term constitution is the establishment of a State or formulate and declare a State.³
- Constitution in Latin composed of two words:
 1. Cume: (a preposition meaning) which means together with
 2. Stature: derived from the word "sta" which means standing, also means "making something up / set up and assign". Overall means setting something together (*constituo*).⁴
- According Jimly Asshiddiqie:⁵

The Constitution is the basic law may be written (in the form of the Constitution) and not written.

 - According to Brian Thompson:

"A constitution is a document roomates contains the rules for the operation of an organization", that is to say: the constitution is a document containing a set of rules, procedures for the exercise of an organization.⁶
 - According to C. F. Strong:

"A collection of principles According to the which the powers of government, the rights of government, and the relations between the two are adjusted, meaning:" A set of rules relating to the powers of government, the rights of the governed, and the relations that govern between them ."⁷

1. PadmoWahyono, 1989, "*Pembangunan Hukum di Indonesia*", Ind-Hill Co, Jakarta, page.30
 2. Jimly Asshiddiqie, 2006, *Konstitusi dan Konstitusionalisme*, page.152.
 3. Sri Soemantri, 1992, "*Bunga Rampai Hukum Tata Negara Indonesia*", Alumni, Bandung, page. 29-30
 4. WirjonoProjodikoro, 1989, "*Asas-AsasHukum Tata Negara di Indonesia*", Dian Rakyat, Jakarta, page 10
 5.Koerniatmanto Soetoprawiro, "*Konstitusi: pengertian danPerkembangannya*", pro justicia, No. 2 tahun V Mei 1987,page 3, dalamDahlanThaib, Ni'matul Huda dan Jazim Hamidi, op cit, page.3
 6. Brian Thompson, "*Textbook sir konstitusional and administrative law*", dalam Jimly Asshiddiqie, *Ibid*, page.10

- According to Lord Bryce:

"A Frame of political society, organized through and by law, that is to say, on in the which the law has established permanent institutions with Recognized functions and definite rights. Meaning: A frame of political life, which is organized by the rule of law, which in this case contains also the provisions of the state institutions in which also regulates the provisions on human rights.⁸

- According to John Alder:

Constitutions means a foundations and the Constitutions of a country embodies the basic framework of rules about the government of that country and about its fundamental values.

- According Henc van Masrseveen:⁹

stated that the constitution is: (1) a national document, in which this constitution serves to show the world (having constitution to show to the outside world) and confirms the identity of the country (to emphasize the state's own identity); (2) a politic-legal document, in which the constitution serves as political documents and laws of a country (as a means of forming the state's own political and legal system; and (3) a birth of certificate, in which the constitution serves as a charter birth a nation (as a sign of adulthood and independence).¹⁰

- According to A. Mukthie Fadjar:¹¹

"Understanding the existing constitution in Indonesia commonly called basic law is a set of rules that govern the organization of the state, which is the principal guideline functioning of a country."¹²

C. METHODS

1. Research Approach

The research approach that will be used is the doctrinal legal research. The authors use this approach to look at the concept of state theory of Indonesian law, whether it has been in conformity with the context Democracy and Justice divinity or vice versa. This research is based on a normative science of law at the time of the study also includes reviewing the system of norms that exist in the laws and regulations. Besides, also conducted a historical approach in uncovering the legal system and comparative legal systems as well as a comparative study in the Netherlands, the UK and Malaysia

2. Nature Research

This research and technical prescriptive, thus deepening the theory is needed. With this deepening of research results can provide a comprehensive picture. The research starts from the study of the theory of state law, the theory of the Constitution, to the product-related legislation and then proceed with a study to obtain significant facts. In the research process, also considered the expert judgment that can be used as a reference to answer the problems studied.

3. Data Source Research

In a study of data sources using secondary data obtained from the literature and documentary studies, in order to obtain primary legal materials, secondary law and legal materials appropriate tertiary studies. The type of data required in this research include primary data and secondary data.

a. Primary data is data obtained from the research, primarily through expert judgment.

b. Secondary data is data that can be obtained from the primary law and secondary law.

Material primary law, namely the law of the ingredients of legislation, whereas the secondary legal material that is giving an explanation of the primary law, for example the research and writings of jurists. While the tertiary legal materials are materials that provide guidance and clarification for materials primary and secondary law among others Dictionary, Encyclopedia, Magazine, Newspaper and legal journals.

4. Technical Data Collection

Data collection techniques for obtaining primary data used techniques Library Studies and Study Documents, with this method is done and make a systematic collection of all legal material, notes and other reports. However, as a supplement, it is possible to do limited Interviews concerning the doctrine, made directly to the legal experts. Before the interviews were conducted, promovendus first prepare the principal questions that are irrelevant to the study. Interview on several experts in the fields of the Constitution, including the Constitutional Court, and Members of the Assembly.

5. Data Analysis

7. . C.F. Strong, 1960, "*Modern Political Constitution, An Introduction To The Comparative Study of their History and Existing Form*", Sidgwick & Jackson Limited, London, hal 9, Dalam Budiman Sinaga, 2005, "*Hukum Konstitusi*", Kusuma Kalam Semesta, Yogyakarta, page 15 – 16

8ibid

9ibid

10. Dikutip dalam Sri -Soemantri, 2002, "*Undang Undang Dasar 1945, Kedudukan dan Aspek Perubahannya*", Unpad Press, Bandung, page .17.

11. John ferejohn, Jack N Rakove and Jonathan Rhile, 2001, "*Constitutional Culture and Democration Rule*", Cambridge University Press, United Kingdom, page. 8-9.

12A. Mukthie Fadjar, 2004, "*Tipe Negara Hukum*", Banyumedia Publishing, Malang, page. 80

Analysis of this data is an explanation of the results obtained during the conduct of the study. Data analysis technique used was qualitative descriptive analysis, the discussion is done by using the basic theory or literature review and all data collected systematically compiled and then be deduced by abstraction, in order to obtain clarity on the issues discussed. Anselm Strauss and Juliet Corbin in his book *Basics Of Qualitative Research, Tehniques and Procedures for Developing Grounded Theory* says there are three main components in the qualitative research, namely: data derived from a variety of sources such as interviews, observation, documents, records and films. Secondly, the procedure may be used for research to interpret and organize data. It consisted of conceptualizing, outlining the categories associated with a series of statements preposition. Conceptualization, outlines and often referred to as coding. Another procedure is part of the analytic process. This includes non-statistical sampling. Writing memos and diagrams, written reports and lisamerupakan third component. This can be presented as an article in a scientific journal¹³. Also including the syllogistic analysis and interpretation.

D. RESULT AND DISCUSSION

Initial thoughts and ideas about the Constitution basically have emerged since the past, namely the period which began development poses the unification of society into a community of people in the form of recognition of sovereignty under one system of government. At this time, in a simple constitution through understanding their meanings appear in the scope of the system of government that is very simple too. Is ancient Greece, a region that gave birth to the idea of the idea of a constitution that preceded the emergence of forms of city-state which then led also ideas about the concept and systematics of government at the time. Ideas relating to political, governmental, and social state.

The idea of the literal meaning constitution introduced by Plato through writings in "Nomoi", so with Socrates that spawned the concept of power, the people and government through his "Panatheanaicus" or "aeropagiticus". In the classical period, the development of constitutionalism is still at a very primitive level and imposed on the city-state in ancient Greece. Accordingly, Aristotle and Plato who inherit life in the span of the next, through the "Politics" discusses more fully the Constitution includes the concept of sovereignty, State power, and government. Although the condition of the State at that time still a polis (city-state) is small, but thought the greek philosopher when it has reached the ideal state and government idealized. Indirectly, the meaning of the Constitution in a piecemeal fashion has emerged and grown in a series of ancient Greek thought.

Furthermore, the idea of the Constitution began to grow rapidly in the Roman period where the idea has reached the stage of sense as a "superiority law" or supreme law. At the stage of this period, the Constitution is interpreted as a rule of law that is separate from the State and its position was much higher. Similarly, Cicero defines a country as a bond of law (*vinculum jurist*). Thus, the Constitution began to be understood as the supreme rule that determines how the state of the building should be developed in accordance with the principles of the higher law. It then has implications for the introduction of a hierarchy of rules (laws) under the constitution and governance by adhering to constitutionalism. Whether it thought the constitution during the Greek and Roman, they both will be needed to prove the inevitability of the Constitution in the sphere of life and the composition of a state. Correspondingly, the Constitution in modern times experienced tremendous development significantly with the state of civilization. The Constitution which at the beginning of its appearance is still a notion of the idea, it certainly began to find his form. That said, the development of a Constitution of the Constitution is built on the idea itself, or in other words, the Constitution itself that guarantees how he would be executed in the state of life.

State in a variety need a Constitution to guarantee the existence and existence itself. Thus, the Constitution between the States with other countries of course differ in terms of the spirit of his nation. It so happens because of differences in socio-cultural, political movements, and differences in the background of the birth process and the formation of a State. Socio-cultural conditions that exist in the Middle Ages in continental Europe made the constitution as a formal legal basis on absolutist kings of which he made the Constitution as an instrument of power and law. At this time also the state and constitution are in a straight line absolutist power of the king. The Constitution serves as a means of power and sovereignty of the King, while the power and authority of the State (the kingdom) while it represented through words and the command of the King; "L'etat ces moi".

The collapse of the king of romance and absolutism that occur in such a manner accompanied by the emergence of the Revolution and industrialization in all fields, at a later stage has spawned the birth of the idea of the formation of the Constitution at the same time in which attention to the rights of individuals through the process of succession at that time. Constitution and constitutionalism at this time is very thick with the concept of individualism and liberalism as the effects of periodization absolutism the end of the king. Constitutionalism in this period is more directed to the embodiment of the concept of *Laizes Faire*, while the position of the State only as a guarantor or "night watchman" only. Said that because the State is passive to the people and handed economic welfare affairs according to the will of the owners of capital and the market mechanism. In the history of development later, technology and industry so rapidly and dominant individualism led to unequal social strata and public welfare. Under such conditions that the State is necessary to take steps to realize the state may realize equitable welfare. The role of the State is slowly no longer be in a position *naachtwachterstaat*, but toward the concept *welfaarstaat*

The Constitution has expanded the substance it during the era of modern law. The concept of rule of law exists in two concepts *rechtsstaat* and the rule of law is an era where constitutionalism actually implemented proportionally in the administration of the State. Between *rechtstaat* appearing in continental Europe and the rule of law that developed in the Anglo-Saxon and Anglo-American, both matching put the Constitution as the main starting the implementation of state and government. Both of them

¹³Anselm Strauss dan Juliet Corbon,1998, *Basics of Qualitative Research, Techniques and Procedures for Developing Grounded Theory*, Sage Publications, London, page.11-12

even put human rights therein. Rechtstaat and the rule of law is the metamorphosis of the concept of individualist liberalism State laws that are no longer able to realize the people's welfare. It is also the one that later would lead to the idea philosophically welfare state which until now has become very advanced in the process of developing of the State administration. This concept underlies the formation of the State constitutions that arise in the future.

The Constitution in view of Islam

Al Quran never explicitly mention either the definition of the Constitution. The absence of a specific definition of the shape of a Constitutional cause polarization and flexibility in the interpretation through the Koran. But mention of the order to be fair to the leader and advocate respect for human rights in a leadership it provides more value and positive limits in interpretation. It later became the rationale for the establishment of various forms of state and government by the Islamic community. It is further mentioned:

"Behold, God sent to be fair and do good" (Qur'an, 16: 90) ..

"If you want to want to give the law among men then you shall give the law with justice" (Qur'an, 4: 5).

"And have them was consulted about their case" (Qur'an, 3: 159).

"And as for the people let dimusyawaratkan their affairs among themselves" (Qur'an, 26: 38).

Furthermore, Al-Quran in several verses ordered to uphold human rights at the same time condemned the efforts tyranny. More explicit obligations and recognition of human rights as part of Constitutionalism mentioned such as berikut;

"And when the girl-child that was buried alive is asked for what crime she was killed" (Qur'an, 81; 8- 9)

"Do you (people) who reject religion / the ones who rebuked the orphan and encourages not the feeding of the poor" (Qur'an, 107: 1-3) 22

"And do you know whether the roads that climb more difficult is it? (It is) to release the slaves from bondage" (Qur'an, 90: 12 13)

"To you your religion and to me mine"

"There should be no compulsion of religion; because it was clear the difference between right and misguided" (Qur'an, 2: 256).

"And indeed we have honored our descendants of Adam and carried them on land and sea and we give, them of sustenance of the good, and we were exaggerating them from most of the creatures that we have created the perfect excess". (Q.S, 17: 70).

Editorial last verse is one of the basic Islamic view of Constitutionalization especially with respect to Human Rights. Human anyone their rights must be respected without distinction. All have the right to life, the right to speak, and expression, freedom of religion, right to work and association, and others covered by the Declaration of Human Rights. Only it should be noted that the rights in question is the grace of God as understood from the word karramuna / We glorified, and thus these rights must not conflict with the rights of God and should always be in the corridor of his religion demands. In the context of this verse Allah endowed privilege not bestowed to others and that is precisely what makes man noble and should be respected in his capacity as a human being. The award applies to all human beings and was born along with his birth as a human being, without distinction as to another person. This principle makes the Prophet Muhammad saw. honor the body of a Jew, who was friends with the Prophet. asking that his attitude, the Prophet. replied: "Is not it also the dead man?" So high and noble position, the man of God declare submission to the human universe.

In the meantime, the Qur'an is universal has different characteristics concerning human rights, which is more theocratic but has a humanistic side. It is certainly very different from the human rights that tend version western thought originated from the conception of rational thought. Nevertheless, the concept of human rights in the Quran has a lot of room to be rationalized and manifested. Enforcement of human rights at the beginning of Islam is based on the apocalyptic and spiritual entity with a spiritual moral sanction by Muhammad as the Messenger at the time. Islam through Quran teaches a balance between the rights and obligations of human rights. Moreover, Islam incorporate the recognition of human rights, human dignity as part of the aspect of "muamalah" all of which could be included in the category of worship. Through Muhammad, pattern recognition and enforcement of the Human Rights piecemeal able to materialize in the constellation of Makkah society that still jahiliyyah.

In some periods of the history of the Jahiliyyah community Makkah, Islam emerged as a universal and tolerant religion. Slavery which has become a habit people are not directly eliminated, but slowly through the approach taken by Muhammad. Islam really understand how slavery is one treatment that the freedom of human rights. Therefore, slavery is removed through the inclusion of Islamic teachings into society itself. This is done through the command to independence slaves in exchange for the violation of aspects of worship as well as a waiver of the provisions of the Shari'a. Thus, the recognition of slavery in Islam is not necessarily to be conserved but eliminated. The train of thought in western rationalist who think Islam is not a religion that recognizes human rights due to the inclusion of the writing and the recognition of "slaves" in the Quran, in fact, is a wrong thing. Slavery implied in the verse of the Quran not as an element of preservation (underogable) over slavery itself, but an early clue to efforts to achieve equality of human beings including eliminating slavery. Islamic universalism that recognizes the value of human equality has become a reference for the elimination of slavery ancient society through aspects of obedience to God, (piety), spirituality and religious aspects muamalah.

History of Constitutionalism in the era of Muhammad experienced a golden age at the time of Hijrah from Mecca to Medina. At that moment begins the incorporation of society and the advancement of society heterogeneity. Islam manifested as a religion that can unite different interests and tribal communities the recognition of human rights and constitutionalism statehood at the time of approval of the Charter of Medina as a constitutive rule over the political life of the people of Medina.

The formation of Medina Charter as the basis for the organization of life and government in Medina further prove that the history of constitutionalism offset concept of human rights in Islam has basically been started since the apostolate of Muhammad as head of state at the time (622). In his position as a spiritual leader or government in Medina, he has implemented the concept of equality and freedom of religion and the principles of democratic governance even though the concept of government that he led a majority theocratic. Charter deal later also known as the shahifah the basis of political and social life in a country that Compound Medina. It became so phenomenal in the annals of considering the city of Medina is one area that is a place to move along with the Apostles who also receive his presence as leader of a new religion at the same carrier (Islam).

As head of state, the Apostle saw the need for an element of unity, unity and consensus in the concept of state. Lil'alamin Rahmatan concept, Ukhuwwah ummah and mashlahah 'aammah (interest and general welfare) actually manifested in the pattern of leadership. Constitution of Medina which was then recognized as a first constitution and authentic basically have a few Characteristic Modern constitutions. Based on the historical period when the Constitution was formed, are clearly visible enormous influence given by Islam through Quran and As-Sunnah described through behavioral and art kepemimpinan Muhammad. The success of the establishment and implementation of the Charter of Medina cannot be separated from the exemplary pattern Muhammad (uswah) describing Islam as a mercy to the universe (rahmatan lil 'alamiin) including tolerance for people of other faiths. In addition, the great ideals establishment of the State that is peaceful, prosperous and civil background to be one formulation of this Charter. Integralization of rules committed by Muhammad's life not only for the Muslim community, but more than that he ensure the needs and the rights of citizens who leads the diversity of cultures and religions.

Textually, Medina Charter is fully narrated by Ibn Ishaq (d. 151 H) and Ibn Hisham (d. 213 H), Although Characteristic contained therein are still old-fashioned, but the truth and authenticity of the charter can be justified given the style of language and drafting editorial used in the Medina Charter is equal and parallel to the style of language used at the time. Similarly, the content and the spirit of its charter in accordance with the sociological and historical conditions of the time. Medina Charter authenticity is admitted by William Montgomery Watt, who stated that the charter document, which is generally acknowledged their authenticity, cannot be counterfeited and written during the Umayyad and the unborn Abbasiyah non-Muslims to enter into the unity of the ummah.

Unfortunately, Democratization and egalitarianism in the state often does not make a model for subsequent Muslim rulers. In the period after Muhammad's death, politics and state government that is increasingly leading to absolute monarchy even tend extremism groups. This is evident through some political turmoil during the reign Khulafa'urraiyidin, Umayyad Dynasty to the golden age of the Abbasid dynasty. In the series of this period, there was a line of absolutism in the government system. Khalifah in an absolute caliphate often act like a king. In addition, community and class divisions and the many political uprising in the government as gold ink injure incising peradaba triumph of Islam. Nevertheless, it must be recognized also in this period, ijtilhad in the field of religion and science as well as the enforcement of equal rights for citizens boomed.

Islam and constitutionalism in the development of Indonesian nationality

The entry of Islam in the archipelago has adversely affected the socio-cultural community. At that moment, a constellation of people who still adhere to the culture and religion of Hindu-Budha and there is animism and dinamisme are gradually blend in and changed with the entry of Islamic teachings. These changes can be seen through the cultural assimilation between Islamic culture and the culture of the archipelago, including Hindu-Buddhist relics are still preserved. The emergence of Islamic kingdoms marked the beginning of the progress of civilization and Islamic government in the archipelago.

Islam was a peaceful one through trade channels and developing its teaching through the propaganda. Islam as a religion when it comes Tauhid then reform in the field of public confidence related to human equality and the abolition of feudalism pattern that separates degrees between man one with another human being. Islam even abolish the caste which at that time still a reference in the context of social interaction. Through sociological and cultural force that has been fused, Islam then appear as one religion is dominant in the archipelago, especially in the concept of Humanity (human rights), education, government, religious and economic trade concept.

As religious beliefs coexist with the heterogeneity of society, Islam appeared very tolerant. Culture as a result of human thought is not necessarily eliminated, but gradually incorporated into it so that the value of monotheism in accordance with the basic values of Islam. Furthermore, it can be concluded that Islam at that time doing cultural compromise in terms of revenues and the implementation of its teachings. The context of the unity of society embodied by the concept of Jamat became the basis for the strength of both the Islamic struggle in the context of enforcement of Shariah and in the movement and resistance against the occupation. This religion contributed greatly in providing the strength and spirit of its own in an effort to struggle for Indonesian independence.

Islam now as a religion that is a complement in the socio-cultural and political life in Indonesia. However, in a series of legal drafting history of the nation after Indonesia gained independence does not necessarily make Islam as a reference and basis for the establishment of Indonesian country at that time. As one of the important components in the social structure of Indonesia, the idea of Islamic thought did not dominate the Indonesian state formation as occurs in debate preparation of the draft Constitution held BPUPKI at the beginning of the independence of Indonesia. The failure of the idea of the Islamic state at the time it has given a great lesson for the Islamic community of the importance of the recognition of the heterogeneity of social equality, society and religion in a country. Islam is not the inclusion of this idea nor a denial or disclaimer of the role of Islam itself.

Discussion of Islam in 1945

1945 was passed and came into force as the constitution of Indonesia through the Indonesian Independence Preparatory Committee session (PPKI) on August 18, 1945. Previously, the text of the 1945 Constitution has been prepared in advance by

"Dokuritzu Zyunbi Tyoosakai" or "Investigation Agency Efforts Preparation of Indonesian Independence "(BPUPKI). The agency was formed and sworn in by the Government Bala Japanese Army on May 28, 1945 in order to meet the Japanese government's promise to grant independence to the people of Indonesia.¹⁴

At the beginning of the discussion of the Constitution in BPUPKI meeting, the compilers have debated the shape of the country including the debate over the income element of Islam. On that occasion, the issue concerning the Establishment of the Islamic State through the view expressed by Ki Bagoes Hadikusumo. In his speech, he offered the idea of privilege and relevance of the principles of Islam in the formation of the State of Indonesia. Ki Bagoes said that the relevance of the four basic teachings of Islam form; The teachings of faith or belief in Allah; The teachings of worship, wise and devoted to God; The teachings of pious charity; Jihad in Allah's teachings. He then hooked four philosophical teachings of Islam into the basic idea of the establishment of the Indonesian state. Furthermore, he said:

"Mr. - the honorable trial! In our country, surely the gentlemen wanted the establishment of a government that is fair and wise, noble jointed deliberation and decision meetings, and broad chest berlebar not pushy about religion. "

Opposite it, Supomo and Hatta rejected the idea of the establishment of the State based on the principles of Islam. Both worrying the issue of jealousy minority as well as in cultural diversity. Moreover, the fact that the followers of Islam countries experiencing difficulties in the development and the search for the identity of law and the separation of state and religion ambiguity makes these two men agreed to reject the idea. On this Supomo said:

"In short, the Islamic countries there is still disagreement about how it should shape the establishment of a state law, so that in accordance with the flow of modern times, which demand attention from countries that also relate to the international world. So, if we here establish an Islamic state, the establishment would conflict will arise in our society and perhaps this Investigation Agency would be difficult to discuss about it. However, honorable gentlemen, would establish an Islamic state in Indonesia means that the state will not establish a unitary state. Establish an Islamic state in Indonesia means to establish a state that will unite with the largest gologan, namely the Muslims. If in Indonesia established an Islamic state, then of course there will be problems "minderheden", about religion into small, Christian religious groups and others. Although the Islamic state will guarantee with the best interests of the other factions, but a small religious groups that can not unite himself with the state. Therefore, the ideal Islamic state was not in accordance with the ideals of unity state that has been coveted by all of us and that has been recommended by the government's army. Therefore, I advocate and I consensus with the establishment who want to establish a state in the sense of national unity totalitarian as I have described earlier ... "

The rejection of the Islamic state issue also raised by Soekarno on June 1, 1945. follow-up meeting on the occasion he said: "... First of all, brothers and sisters, I ask: if we want to establish an independent Indonesia for something people, for something faction? Establishing the State Indonesia Indonesia Merdeka Merdeka name alone, but actually only to glorify one person, to give power to the nobility?

What we mean is that? Of course not! Both brothers were named the nationalities here, and the brothers called the Islam, all have agreed, that is not a country so that we have a purpose. We want to establish a state "all for all". This is one of the basic thoughts that later would I peel again. So, which is always buzzing inside I have a soul, not just in a few days in the trial Dokuritsu Zyunbi Tyoosakai this, but since 1918, more than 25 years, are: Basic first, a good basis for the State of Indonesia, are basic nationality." Moreover, Soekarno through freedom of speech gives an idea of the application of a religion but below the national unity. Sukarno did not even reject Islam as a state religion, but rejected the idea of a single infusion of religion into a formal shape of the country. However it does not mean Soekarno deny the role of Islam in the history of the struggle of the Indonesian nation. Through his thoughts, he advocated for attention to diversity and equality in the recognition of religious rights for their respective faiths under one nation-state idea.

E. CONCLUSION

The rejection of the inclusion of ideas of Islamic countries into a Constitution which occurs in the current debate it as a portrait of the condition that Islam should not put themselves in a position of competitive vis-a-vis the other components in the application of the concept of the State based on Islamic ideology in the country's Constitution - Indonesian nation. However, Islam should be displayed as a complementary element in the foundation of the social order, cultural, and politics of the country. Efforts to make Islam as an alternative ideology or a single colour giver will only bring division in society as a whole given the social complexion diverse Indonesian society.

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