

**THE DEVELOPMENT OF ISLAMIC CONSTITUTIONAL  
THOUGHT OF THE MASYUMI AND ITS INFLUENCE IN THE  
FORMULATION OF THE INDONESIAN CONSTITUTION  
1956-2002**

**THESIS**

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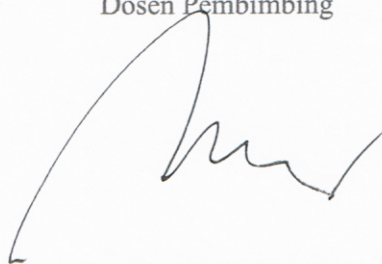
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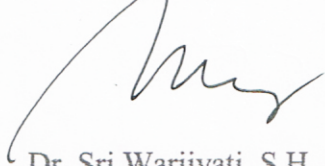
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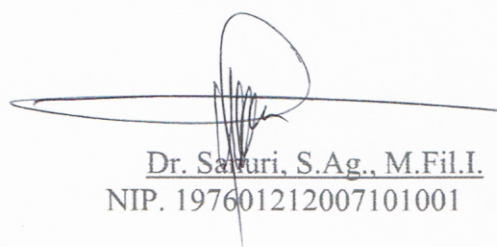
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Surabaya, 18 September 2019

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Amirul Haidaruddin





















































- 4) Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1973).
- 5) Herbert Feith and Lance Castles (eds), *Indonesian Political Thinking 1945-1965* (Ithaca and London: Cornell University Press, 1970).
- 6) Nadirsyah Hosen, *Shari'a & Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).
- 7) Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Hawaii: University of Hawaii Press, 2001).
- 8) Masdar Hilmy, *Islamism and Democracy in Indonesia: Piety and Pragmatism* (Singapore: Institute of Southeast Asian Studies, 2010).
- 9) Mahkamah Konstitusi RI, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Pembahasan 1999-2002* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010).
- 10) Muh. Yamin, *Naskah Persiapan Undang-Undang Dasar 1945* (Jakarta: Yayasan Prapantja, 1960).
- 11) R. Soepomo, *Undang-Undang Dasar Sementara Republik Indonesia* (Jakarta: Noordhoff-Kolff N. V., 1950).



facilitate the way of thinking in understanding the overall thesis. The systematic writing is arranged as follows:

Chapter I, contains an introduction that covers the background of the study, Identification and limitation of the study, research questions, literature review, objective of the study, significance of the study, definition of key terms, research method, and thesis outline.

Chapter II, provides brief profile of the Masyumi including its genesis, foundation and the end of the Masyumi. This chapter provide the Islamic constitutional thought of the Masyumi and its continuity after the Masyumi dissolved.

Chapter III, Provides the context or focus of the study, that is, the formulation of the Indonesian constitution since its enactment in 1945, constitution-making in the Konstituante 1956-1959 and constitutional reform in the MPR 1999-2002.

Chapter IV, is devoted to analyze the research questions. This chapter deals with two main issues: first, the formulation of the Indonesian constitution; and second, the development of Islamic constitutional thought of the Masyumi and its influence in the formulation of the Indonesian constitution.

Chapter V, contains conclusions that discusses findings or answers to the research questions of this research and suggestions relating to the topic of discussion of this thesis.

































































































- 11) The right not to be prosecuted and not to be punished except for a penal offence prescribed by law;
- 12) The right of an accused to be tried under the most favourable legal provision for him in case of a change in the law;
- 13) The right not to be punished by a penalty of confiscation of one's property
- 14) The right not to be subjected to arbitrary interference with one's privacy, family, home, or correspondence, and not to be offended in one's honour and reputation, also protected by law, except by the order of a tribunal or other legally authorized power;
- 15) The right not to be subjected to intrusion of one's residence;
- 16) The right that no one enter a person's court-yard or home against their will, except in cases prescribed by law;
- 17) The original list i of 24 rights unanimously agreed by the preparatory committee provided:
  - a) Freedom of religion, thought and conscience;
  - b) The right of those entering an educational institution not to be subjected to any other religious prescriptions or ceremonies then those of their religion and conviction.

This right was not put to the vote;
- 18) The right to rest and leisure;
- 19) The right to receive compensation for any property which has to be demolished for the sake of public interest;





































July 1959 which contained *first*, dissolution of the Konstituante, *second*, revoked the enactment of the 1950 Constitution and re-enacted the 1945 Constitution, *third*, the formation of the MPRS and DPAS.

Actually, refers to Adnan Buyung Nasution's findings in his doctoral study, *The Aspiration of Constitutional Governmnet in Indonesia: A Socio Legal Study of the Indonesian Konstituante*, the Konstituante has almost succeeded in completing its work in drafting the Constitution. The Konsituante adopts many human rights provisions, al least there are at least about 35 formulations regarding human rights adopted by the Konstituante.

However, the 1945 Constitution can legally apply not by constitutional viewpoint but on the view that the presidential decree of 15 July 1959 was supported by political and military powers. From a constitutional perspective the re-enactment of the 1945 Constitution is a form of coup. But if the coup's won, it will become a new law, but, although it was using subjective point of view, the Presidential Decree of 1959 can legitimate in using the principle of *salus populi suprema lex* based on *staatsnoodrecht*<sup>1</sup> (emergency law) situation.

After amendment, the important thing is that the formulation of the 1945 Constitution of the State of the Republic of Indonesia confirm that Indonesia has chosen the path of constitutional democracy as the system for state. Article 1 paragraph (2) of the 1945 Constitution read as follows:

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<sup>1</sup> More information about Emergency Constitutional Law can be found in Herman Sihombing, *Hukum Tata Negara Darurat di Indonesia* (Jakarta: Djambatan, 1996).; Jimly Ashiddiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Pers, 2008).

























box”.<sup>17</sup> Nadirsyah Hosen argue that the phrase “*dengan kewajiban menjalankansyariat Islam bagi pemeluk-pemeluknya*” (with the obligation to carry out sharia for adherents of Islam) is vague, the phrase does not state clearly that it is the state that has an obligation to implement Islamic law.<sup>18</sup> Donald L. Horowitz noted, Indonesia should be a state that is both Islamic and democratic. But Indonesia is a religiously plural society, and many Muslim thinkers and politicians, even some in the Masyumi stream, reject the idea of an Islamic state for such a society.<sup>19</sup>

Ismail Sunny asserts that with the provisions of these seven words, it does not at all mean the formation of an Islamic state by the Jakarta charter.<sup>20</sup> Still related to the issue of constitutional reform, Yusril proposed the idea of Islamic sharia as a source of law. According to Yusril, Sharia could be the highest legal source in the state. Sharia as a source of law is different from sharia as a law. If as a source of law, Sharia becomes a source of national law formation. Its principles can be transformed into national law.<sup>21</sup>

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<sup>17</sup> Ramlan Mardjoned and Lukman Fatullah Rais, *Amandemen UUD 1945 tentang Piagam Jakarta* (Jakarta: Media Dakwah & DDII), 86.

<sup>18</sup> Nadirsyah Hosen, *Sharia and Constitutional Reform in Indonesia* (Singapore: ISEAS, 2007), 213.

<sup>19</sup> Donald L. Horowitz, *Constitutional Change and Democracy in Indonesia* (New York: Cambridge University Press, 2013), 248.

<sup>20</sup> Ismail Suny, *Jejak-Jejak Hukum Islam dalam Sistem Ketatanegaraan Indonesia (Sebuah Bunga Rampai)* (Jakarta: Konstitusi Press, 2005), 55.

<sup>21</sup> Kholid Novianto and Al Chaidar, *Era Baru Indonesia: Sosialisai Pemikiran* (Jakarta: Rajawali Pers, 1999), 161.











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