

# The Fiqh Paradigm and the Religious Justification for the Secular State: The Traditionalist Muslims and the Dutch Colonial Rulers

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## Abstract

Traditionalist Muslims understood that Islam is not identical to politics, so political Islam is not monolithic, in aiming at power and then at the establishment of the Islamic state. They believed that political Islam is to fulfil salvation in the world (*rahmatan lil'alam*)<sup>2</sup> so that the state is a tool, not the object, of religion, and accordingly, they were more concerned with the function of the state than that of the form.<sup>3</sup> Accordingly, they justified any existing political system for the purpose of maintaining public order, which constitutes a pre-requisite for religious order. In line with this, for example, they had justified the non-Islamic states of the Netherland East Indies.

**Key words:** the Traditionalist Muslims, the Fiqh Paradigm, Religious Justification, Political Justification, and the Indonesian Secular State.

## Introduction

I would like to discuss the issue of Islam and the state, with a focus on those who support the secular state with religious justification in Indonesia. In this regard, I follow Talal Asad's advice that religious people should understand the meaning of the term *secular* from their own particular religious traditions as a way of constructing the picture of social interactions that involve secular and religious affairs.<sup>4</sup> Their understandings of secular may be slightly different from the modern theory of secular state, and accordingly they represent a moderate theory of secularization which accommodates the religious aspirations of people through public reasoning. *Nahdhatul Ulama* (NU) and other traditional organizations such as the *Persatuan Tarbiyah Islamiyah*<sup>5</sup> (*Perti*, Union of Islamic Education), *Persatuan Umat Islam*, and *Nahdlatul Wathan* adopted the paradigm following the Sunni tradition<sup>6</sup> which views the relationship between Islam and the state as not as an ideological paradigm, but

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<sup>2</sup> Munib Huda, 1998, p. 17

<sup>3</sup> I will address these issues in greater depth later in the paper.

<sup>4</sup> Asad, 2003. Please see also Volpi, 2010, pp. 2-3.

<sup>5</sup> Please see: Latif, 2008, p. 164. Perti was founded in 1930 in West Sumatera and it successfully influenced the modernization of the traditionalists in Jambi, Tapanuli, Bengkulu, Aceh, Kalimantan Barat, and South Sulawesi. Please see also Jones, 1984, p. 10. Although Perti was a small Sumatra-based party, it was ideologically akin to NU, but even stricter than NU in its reliance on the *Shafi'i* school of orthodox Islamic law. Perti had received 24 seats in the 1971 election and this meant that Perti had a relatively strong following because it was the same number of seats as obtained by Parmusi, the modernist party.

<sup>6</sup> Please see: Effendi, 2010, pp. 19-26.

according to the Fiqh paradigm, for believing that Islam and the state constitute different identities, so that Islam does not always require an Islamic state.<sup>7</sup> Whereas, the Muslim modernists, in Indonesia often associated with *Muhammadiyah* and *Persis*, accepted the Sunni tradition just in specific religious matters (*ibadah*), not on societal life,<sup>8</sup> because they advocated the ideological paradigm, namely Islamic ideology, that idealized an Islamic state, implying the unity of Islam and state as one identity.<sup>9</sup> In this regard, NU and Perti were consistent with the background of the birth of Sunni, which is to say, out of its attempt to reconcile the damaging ideological conflicts following the death of Muhammad the prophet, especially with the killing of the Caliph Utsman. Accordingly, the traditionalists tried to behave moderately toward other religious paradigms as a way of reaching mutual understanding.

This section tries to elaborate how the Fiqh paradigm dealt with these political systems. In the discussion, I compare the Fiqh paradigm with other paradigms, namely the Islamic ideological paradigm and the secular paradigm. The birth of the Islamic ideological paradigm was to challenge the Dutch colonial rule with its political system; meanwhile, the secular paradigm challenged the method of the Islamic ideological paradigm to deal with the Dutch colonial rule, as it favoured a secular political system. As a prelude to this discussion, I would like to elaborate how the Fiqh paradigm justified as well as challenged the legitimacy of the pre-colonial Sultanates and Islamic kingdoms. By so doing, I am explaining how religious legitimacy intermingles with political legitimacy.

### **The pre-NU traditionalist Muslims and their Fiqh paradigm in relation to the Dutch colonial rule**

There is no agreement amongst Muslim scholars about the concept of an Islamic state and it is not surprising that Islam and the state are different identities. Following the Fiqh paradigm, the traditionalist Muslims aspired to an Islamic state which would implement Shari'a into the state regulations, apart from their acknowledgements of the different nature of Islam and the state. Accordingly, they did not dichotomize the political systems of the world into the 'territory of Islam' (*dar al-Islam*) and the territory of unbelievers' (*dar al-kuffar* or *dar al-hard*), but also recognized the third category of the 'territory of peace' (*dar al-sulf*).<sup>10</sup> From this perspective, indeed, we understand that they aspired to an Islamic state (*dar al-Islam*) where the state implements Shari'a, but they did not want to force its establishment so that they recognized the existence of the 'territory of peace' (*dar al-sulf*).

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<sup>7</sup> Please see: Arkoun, 1994, pp. 20-21. In this regard I agree with Mohammed Arkoun who distinguishes between "ideas" and "ideology". This kind of distinction is similar to his distinction between "myth" and "mythology".

<sup>8</sup> Wahid, 1999b, pp. 153-154.

<sup>9</sup> Noer, 1985, p. 281 and 284. Muslim Modernists from *Persis*, *Permi*, and *Sarekat Islam* did not want to legitimize the NEI government because the latter was not an Islamic state. More moderate Muslim modernists such as *Muhammadiyah* did cooperate with the NEI government in their efforts of developing a modern Islamic education which would challenge the authority of the Muslim traditionalists.

<sup>10</sup> Hosen, 2005, p. 429.

This last category was based on a hadith that ordered the Muslims to obey the ruler of Ethiopia, although the ruler was not a Muslim.<sup>11</sup>

The Indonesian Muslims had established some Islamic kingdoms before the arrival of European colonisers such as Portuguese, Spanish and the Dutch, in which the Sultans implemented Shari'a into the state law. We recognize some Islamic kingdoms in what is now Indonesia such as the Sultanates of Aceh, Gowa, Deli, Mataram, Banten, Ternate, and Tidore. However, we also should notice the fact that in the history of Islam that there was no common and uniform Shari'a implemented by the Islamic states. These Islamic kingdoms each implemented a slightly different Shari'a as a result of the influence of different socio-cultural contexts.<sup>12</sup> This implies that a Sultan was not able to claim the rights as the only true interpreter of Islam. Indeed, the Sunni tradition recognized two elements of the societal system that are the clerics and the ruler. The role of the clerics was to reformulate Shari'a (Islamic laws) and the role of the rulers was to implement them in the societal life.<sup>13</sup> This implies that the state and Islam are different identities and, indeed, the traditionalist Muslims advocated the Sunni tradition: that the validity of religious practices is not related to Muslims' political affiliation, but it is based on its validity in the face of the Fiqh which is formulated by the clerics. However, they recognized the existing political system, namely the state, as a tool for supervising public order which constitutes a pre-requirement for a religious order.

The secular character of an Islamic state is clearly informed by the fact that not all Shari'a becomes state regulation and accordingly, the traditionalist Muslims understand Islamic law in terms of the Fiqh. Not all products of the Fiqh became the state regulations, as the coverage of Fiqh is wider than political affairs. Regarding the fact that not all clerics were incorporated into the state bureaucracy, this implied that the Sultan did not properly claim to represent the interest of Islam. This is also inferring that the Sultan was not able to claim the rights for an absolute religious legitimacy. In this regard, it is useful to quote Abdullahi Ahmed an-Naim who argues 'that framework and main principles of Shari'a were developed as an ideal normative system by scholars who were clearly independent of the state and its institutions.'<sup>14</sup> Accordingly, there exists disparity between the implementation of Shari'a by the state and the product of Shari'a by the clerics. This disparity informs us that

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<sup>11</sup>Hadiths was narrated by HR. Abu Dawud, Tirmidzi, Ahmad that Abu Najih (Al-Irbadh) bin Sariyah *radhiyallahu 'anhu* said that Muhammad the Prophet PBUH gave heart-touching advice to us so that our heart became shaken, beating and our tears dropped, then we asked: hey Muhammad the Prophet, it is likely the advice of those who will die and leave us forever, give us your will! The Prophet, then, said: "I made myself will that all of you should be afraid of the God, besides listening and following orders, although they came from the ruler of Ethiopia (*Habsyah*). Really, those who have lived a long time amongst you will encounter with some conflicts. Accordingly, you should hold fast to my tradition (hadiths).

<sup>12</sup> The discussion of the pre-colonial Islamic political systems in Indonesia presents a generalised picture that does not explore the differences between the Hindu-Buddhist influenced states based in Java and the maritime states from Aceh through to Tidore and Ternate.

<sup>13</sup> Effendi, 2010, p. 26.

<sup>14</sup> an-Na'im, 2008, p. 325.

the state is not able to implement Shari'a completely and accordingly the production of Shari'a by the clerics might play the role of a normative critic of the ruler.

In line with the above mentioned categorization of state in Islamic civilization, there existed some Islamic kingdoms in Indonesia which implemented Shari'a into the state regulations. Sultan, the leader of an Islamic kingdom, positioned himself as a leader of an Islamic state as he/she tried to find legitimacy from Islam. By doing so, the Sultan as the leader of the political institution also tried to assume a religious leadership based on his role of the protector of Islam. For winning the religious legitimacy, Sultans always tried to find justification either from the centre of Islam, namely Mecca, or that of the existing caliph in Istanbul, Ottoman Empire, who they considered, inaccurately, a spiritual leader.<sup>15</sup> Whereas, the clerics considered the Sultan as a symbol for an Islamic theocratic state in terms of political leadership, not religious leadership. Accordingly, the Sultan's efforts for uniting both political and religious leaderships were related to the secular nature of politics. It was quite often that we find the cases of politicization of Islam for the purpose of maintaining power. Indeed, it was not easy for Sultan to acquire religious leadership as he/she should master Islamic sciences, namely understand Islam, besides practising Islam properly. However, religious leadership was not monolithic such as in the case of the existence of some schools of Islamic jurisprudence, and accordingly, he/she should tolerate other understandings of Islam if he/she expected that he/she would receive a wider political legitimacy from other religious communities. From this elaboration, we find that there is a subtle relationship between political and religious legitimacies.<sup>16</sup>

For the purpose of having a strong legitimacy from the Muslim community, the Sultans tried to develop cooperation with the clerics. As the leaders of Islamic states, they supervised both Islamic civil and criminal laws and they cooperated with some clerics for the purpose of governing both civil and criminal laws. For managing Islamic affairs, Sultans appointed a *Mufti* who was in charge of providing legal advice on Islamic affairs. However, it was very rare to have a monolithic view on certain Islamic laws as some clerics had a quite independent position from the state, especially in their rights of formulating Shari'a. This implies the existence of the plurality of Shari'a which would challenge the validity of Shari'a as formulated by the regime. The cooperation between the Sultans and the clerics did not mean that an Islamic kingdom represented the union of political and religious leaderships. It was due to not all clerics being subjugated into the state, as they were able to perform their

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<sup>15</sup> This caliphate did not have a formal relationship with these Islamic kingdoms. Awkwardly, Sultans considered the caliph as a spiritual leader, besides the symbol of the unity of the Sunni Muslims. This term of unity is also awkward as the Shiite Muslims had their own leaders who unconvincingly claimed a political leadership as well as religious leadership.

<sup>16</sup> In the classical history of Islamic civilization we find that Muhammad the Prophet was able to establish an Islamic state, although he assumed himself as a religious leader, not a political leader. Regarding Muhammad's status as a Prophet, namely religious leader, he did not choose someone or provide the mechanism for choosing someone as his successor. In political affairs, the position of Muhammad was replaced by some caliphs and accordingly, this kind of political system was recognized as the caliphate. These caliphs were chosen by the Muslims for the purpose of implementing Shari'a (Islamic law) and they were not the formulators of Shari'a. Indeed, the authority of Shari'a is in the hand of the clerics who understand Islam.

role of Islamic leaderships outside the state apparatus, except in the case of criminal law in which they abided by the existing political system.

In an Islamic kingdom, the clerics had important role in the management of the state in matters of both civil and criminal affairs. The Sultan delivered an authority and appointed a cleric to occupy the supreme office of judge (*hakim*). Of course, this supreme judge appointed some clerics to implement civil and criminal law at lower levels. In other words, these clerics executed criminal law in the name of the Sultan; it did not rest on their authority as clerics. This was because the authority of the clerics was not based on power, but on their Islamic knowledge, so that if they punished the offender against criminal law, it might raise counter-violence produced by the other social powers in the society. In this regard, this criminal aspect of law does not bear in itself a specific feature of Islam, as a non-Islamic state also executes this kind of criminal law, which constitutes a tool for establishing public order.<sup>17</sup> This implies that this criminal law has a secular nature because it requires power to execute.

Apart from the help of the clerics to execute criminal law, the clerics were more concerned with the implementation of civil law which regulates the societal life as well as the family life of the Muslims, but not their political life. For that purpose, the Sultan facilitated the establishment of the Court of Religion (the *Penghulu* Court) which handled internal Muslims' affairs such as marriage, divorce, inheritance, alms, etc. In line with this, the Sunni clerics did not hesitate to support the existing political power as long as regimes gave the Muslims freedom to practice their religion. In the case of Indonesia, it happened before the Muslims were able to establish independent Islamic kingdoms and they organized their internal affairs under the leaderships of the clerics who recognized the sovereignty of non-Muslim rulers.<sup>18</sup> This implies that the traditionalist Muslims followed the Fiqh paradigm that Islam and the state were different entities, although both should develop mutual legitimacy.

The Sultans did not always have strong support from the clerics if the former did not rule following the Islamic teachings. It was quite often also that the Sultans ruled autocratically and neglected the advice of the clerics. This was due to the fact that the Sultans assumed the power by following the concept of the 'shadow of God' and they felt superior to the clerics who received their authority from Muhammad the Prophet. In the case of Mataram kingdom, Amangkurat I (1645-1677) ordered the killing of some 5,000 clerics who championed a non-syncretic Islam. Indeed, it was very often that the clerics were not able to provide checks and balances to the power of the Sultans, and, accordingly, the Sultans often violated the principles of Islamic law.<sup>19</sup>

VOC - *Vereenigde Oostindische Compagnie* (then the Netherland East Indies government - NEI) was very successful in expanding its influence over Indonesia because it applied the

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<sup>17</sup> Kamil & Bamualim, 2007, p. 97.

<sup>18</sup> Wahid, 1999a, p. 54.

<sup>19</sup> Noer, 1978, p. 4.

tactic of *divide et impera* (divide and conquer). Some Islamic kingdoms were able to maintain their independence for long time, but they, then, were subordinated into the Dutch colonial rule.<sup>20</sup> In the second part of 19<sup>th</sup> century, the Dutch rulers were able to control most parts of Indonesia either economically or politically, apart from the fact that its territorial expansion took place after the occupation of Aceh in 1904. The Dutch rulers had tried to control the trade in Nusantara since 1602 with Batavia as its centre. For most parts of Indonesia, the Dutch rulers did not run the government directly, but indirectly through some native officers, who were under the direct command of some kings.<sup>21</sup> The Dutch ruler governed the people directly when they did not find any local rulers. If so, they made use of Islamic law to judge civil affairs amongst Muslims for the purpose of avoiding the frontal reaction of the Muslims and, on the other hand, the Muslims respected the criminal law executed by the colonial ruler.

This indirect rule enabled Muslims under the leadership of their kings to manage their internal religious affairs both in the matters of civil and criminal law, although they recognized the superiority of the colonial ruler.<sup>22</sup> For the purpose of the domestication of Islam, the NEI government tried to control the system of leadership within the Islamic community so that in 1882 it created the courts of religious affairs (*priesterraad*)<sup>23</sup>, and, then, elevated the status and authority of the religious officer (*penghulu*) by strengthening their aristocrat status with symbolic and feudalistic rights. Next, the clerics with their *pesantren* were placed under the control of these religious officers. This policy was also to enlarge the power of local rulers,<sup>24</sup> even though they were under the control of the NEI government.<sup>25</sup> In some cases, *resident*, the NEI officer, had authority to appoint *penghulu* (Islamic religious officer) in areas which were not under direct control of the Sultans.<sup>26</sup>

Following the Fiqh paradigm, the traditionalist Muslims respected the NEI government in matters of the implementation of the criminal law which would create public order. This was due to public order constituting a requirement of the religious order. They did not want to question the ideological philosophy of the state as the validity of pure religious practices was not dependent on a given political ideology.<sup>27</sup> They differentiated

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<sup>20</sup> Gibson, 2007, p. 111.

<sup>21</sup> Suminto, 1985, pp. 183-184.

<sup>22</sup> Please see: Ali, 1987, pp. pp. 189-190. The VOC reign did not force the implementation of Dutch Law. It can be observed from the Jakarta Statutes of 164, Compendium *Freijar* of 1760, *Mogharraer* legislative manual, *Pepakem Cirebon* legislative manual, and B.J.D Cloutwijk's compendium of Bone and Goa Laws.

<sup>23</sup> Noer, 1978, p. 43.

<sup>24</sup> Abdullah, 1987, pp. 68-69.

<sup>25</sup> Kuntowijoyo, 1987, p. 110.

<sup>26</sup> Lev, 1980, p. 31.

<sup>27</sup> In the classical history of Islam, the Sunni tradition avoided challenging the political authority because it risked maintaining the religious order. Indeed, some Sunnis opposed the political authority but they did it for political reasons without theological justification. This stand is also adopted by the majority of Shiites affiliating with the *Itsna Asy'ariah* sect. They believe that *Imamah* is just a religious concept not an ideological concept so that they are not required to establish an Islamic state which unifies both political and religious leadership at once.

Islam from the state in which the religious authority was in the hand of the clerics and the rulers just had power for establishing public order. Following the Sunni tradition, they considered that it was justified to live under non-Muslim government as long as they had a degree of freedom to practice the basics of the religion and the government guaranteed the safety of the individual as well as his/her property; “but they are expected to manage their affairs in such a way that it did not contribute to the military strength.”<sup>28</sup>

In 1888, the Clerical Party in the Netherlands won the election and governed the country.<sup>29</sup> These parties assumed the moral responsibility of developing Dutch East Indies people, but this spirit was not neutral, but rather grounded in the belief in the superiority of Christianity over Islam. Accordingly, the NEI tried to marginalize Shari’a systematically by deploying some methods such as confronting Shari’a with the local law (*adat*), introducing Western law, and issuing some policies related to Shari’a.<sup>30</sup> In line with this, the NEI government adopted the association policy which would unify the NEI with the Netherlands through the Cultural Association within the programs of Ethical Policy. This change in Dutch policy weakened the political legitimacy of the NEI government in the eyes of Muslim leaders as they favoured Christianity. The Muslim leaders also did not agree with the cultural association, in the form of an educational system, as they did not want to identify with Christianity. On the contrary, the Muslim leaders expected that the government would support, as well as develop, Islamic education in order to be compatible with modernization. This implies that the government did not want to transform the Islamic education to suit the modern changes and it signified the government’s denial of a full participation of Muslims in education. The government was only concerned with the education of the limited people of the local elite, namely *priyayi* and other local elite groups outside Java, who would play the role of associating Indonesian culture with the Netherlands’ culture. It introduced a secular education which would detach the local elites from Islamic tradition. Accordingly, this policy would eliminate the idea of Pan-Islamism as the government was convinced that those who have identified with the Dutch culture would be easy to convert by missionaries.<sup>31</sup> In line with this, the government was more concerned with controlling than developing religious education. The government, later, was willing to subsidize the private Muslim schools which followed the government educational system.<sup>32</sup>

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<sup>28</sup> This stand point is justified by all big schools of Islamic laws, except *Maliki*, but it was not due to the matters of doctrines. Please see: Saeed, 2007, p. 21.

<sup>29</sup> In the 1888 elections in Holland the largest party in the lower house was the Liberal Union with 46 seats, followed by the Anti-Revolutionary Party 27 seats and the Catholic Party with 25 out of a Tweede Kamar of 100 seats. The government was formed around the Protestant Anti-Revolutionary Party and the Catholic Party. This alliance of Protestant and Catholic political parties dominated Dutch politics until 1918. So, the so-called Ethical policies and cultural association were introduced by governments dominated by these parties.

<sup>30</sup> Kamil & Bamualim, 2007, pp. 89-99.

<sup>31</sup> Suminto, 1985, pp. 39-40. This modern education was also to fulfil the demand for the skill labours as well as educated people following the introduction of modern capitalism.

<sup>32</sup> However, in the 1930s the government accommodated the wish of the Muslim leaders that the government schools provided religious lessons to the Muslim students as an extracurricular subject. Of course, it was a

This association policy was partly successful in augmenting modern intellectuals who challenged the Islamic ideological paradigm advocated by the Muslim modernists associated with Sarekat Islam. These Muslim modernists were the followers of the Middle East scholars such as Jamal al-Din al-Afghani, Muhammad Abduh, and Rasyid Ridha who had already adopted modern sciences and philosophy to make use of them for the purpose of Islam at the end of 19<sup>th</sup> and early 20<sup>th</sup> centuries. They tried to challenge the secular ideology of the West by introducing Islam as a kind of ideology which encompassed all aspects of life. The introduction of an Islamic ideological paradigm was a kind of a counter discourse, they hoped, which would prevent Muslims from adopting the secular Western ideologies.<sup>33</sup> In this regard, the secular intellectuals were able to provide a counter discourse to the idea of Islamic ideology. Their thoughts had a strong influence amongst the Indonesian people, although they were not able to attract a significant membership comparable to the Muslim organizations such as Sarekat Islam, NU, and Muhammadiyah because of the repressive colonial regime.

Another impact of the introduction of modern education was the fact that not all Western educated *priyayi* supported the idea of the acculturation policy. This was due to the fact that some *priyayi* had a strong Islamic background because they worked within an Islamic kingdom. This was the case of R.M. Tirtoadisoerjo who quit from the colonial bureaucracy. He was a modern intellectual who graduated from *OSVIA* (a training school for native government officials in the Dutch East Indies).

He, then, established *NV Sarekat Dagang Islam* in 1909. Moreover, the majority of these *priyayi* came from the families of religious officers who had a strong Islamic background and who advocated the Fiqh paradigm.<sup>34</sup> It was believed by Zaini Ahmad Noeh in his introduction to Daniel Lev's book titled *Islamic Courts in Indonesia*. In this regard, he challenged Lev's statement that *penghulu* were not in the forefront of an Islamic movement. He argued that the important founding figures of Muhammadiyah, the modernist Islamic movement, namely K.H. Achmad Dahlan and K.H. Abdullah Sajad, were respectively a *penghulu* at the Jogjakarta Sultanate and the Pakualaman Courts. Last but not least, he argued that many NU leaders graduated from *Madrasah Mamba' ul-Ulum*, a traditionalist training school for *penghulu*, established by the royal family of Surakarta Sultanate of Central Java as a part of the modernization of pesantren which had been in existence since 1906.<sup>35</sup> For that purpose, they copied the tactics and methods of their

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result of the modernist and traditionalist Muslim leaders to unify under the auspice of MIAI in 1937 in the cause of Islam. Please see: Noer, 1978, pp. 26-27.

<sup>33</sup> Abdullah & Hisyam, 2003, p. 148.

<sup>34</sup> It was not surprising that many *priyayi* had strong Islamic background because majority of kingdoms were Islamic kingdom. It was the case of R.M. Tirtoadisoerjo who was quit from the colonial bureaucracy and established *NV Sarekat Dagang Islam* in 1909. He was an modern intellectual because he graduated from *OSVIA*. Please see: Abdullah & Hisyam, 2003, p. 152.

<sup>35</sup> Latif, 2008, p. 82. In 1914 it was then followed by the establishment of *Nahdlatul Wathan* by Abdul Wahab Chasbullah and Mas Mansur, the pesantren reform in Jombang, East Java, in 1916 by Kyai Ma'sum, and the pesantren reform in Padang in 1918 by Siradjuddin Abbas.

opponents, namely the Dutch and the Muslim modernists, to deal with the issue of modernity.<sup>36</sup> In this regard, he mentioned K.H. Masykur who was, then, a minister of religious affairs, many times, and vice head of DPR/MPR.<sup>37</sup>

In order to deal with the Muslims more effectively, the NEI government established another institution of *Het Kantoor voor Inlandsche Zaken*. Regarding the fact that the majority of the people were Muslim, this *Het Kantoor voor Inlandsche Zaken* was popular as *Kantor Urusan Agama (KUA)* amongst Indonesians.<sup>38</sup> It was established in 1899 in Java and later in 1918 in Sumatera. This institution was to provide advice on native people's affairs, especially related to Islamic movements, to the General Governor, and Snouck Hurgronje was appointed as the first chief. In this regard, Sayyid Utsman of the Muslim traditionalist accepted the offer of the Dutch as the Honorary Advisor for Arab Affairs at KUA as well as a religious officer in 1889 until his death in 1914. He also assumed the role of *Mufti* in Batavia. The traditionalist Muslims accepted this colonial interference in religious affairs as long as this helped in the establishment of public order as well as religious order. However, this appointment of *Mufti* did not nullify the rights of the clerics to issue religious laws.<sup>39</sup>

Sayyid Utsman had an important role in the legal recognition of *Sarekat Islam (SI)* by the NEI government. His role was related to his position as a *Mufti* besides his position as one of the SI leaders in Batavia<sup>40</sup>. Accordingly, he was asked by CSI to provide religious justification for the purpose of obtaining legal recognition from the government.<sup>41</sup> However, after SI obtained the recognition of the NEI government, it became more radical under the leadership of H.O.S. Cokroaminoto and at the 1917 national congress in Bandung it demanded Indonesian independence. However, SI obtained approval to become a political party from the NEI government, and it sent its representatives to *Volksraad*<sup>42</sup> (a form of parliament) which had just been established in 1917.<sup>43</sup> Then, the ideological paradigm advocated by the Muslim modernists dominated SI<sup>44</sup> and had directed SI to not accommodate the voice of the traditionalist Muslims at the Congress of Islam in 1924, which would send its representatives to the caliphate congress in Hejaz. Accordingly, the traditionalist Muslims quit from SI and established NU and consequently, this became the

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<sup>36</sup> Latif, 2008, p. 162. The traditionalists tried to reform the pesantren; use local languages (mixed with Arabic) in the Friday sermons; introduce *madrasah* which teach general subjects; read newspapers and magazines using the Latin alphabet; adopt modern educational technology and so on.

<sup>37</sup> Noeh, 1980, pp. pp. 5-7. K.H. Saifuddin Zuhri, a Minister of Religious Affairs at the time of Soekarno's Guided Democracy era, also graduated from this *Mamba' ul-Ulum* in Surakarta. Please see: Saifuddin Zuhri, 1977.

<sup>38</sup> Suminto, 1985, p. 6.

<sup>39</sup> Kaptein, 2007, p. 102.

<sup>40</sup> There was also a strong Marxist influence faction within SI that became the PKI and SI encompassed a broad ideological and religious spectrum.

<sup>41</sup> Kaptein, 2007, pp. 100-102.

<sup>42</sup> A People's Council for the Dutch East Indies.

<sup>43</sup> Please see (n.a)

<sup>44</sup> Kaptein, 2007, p. 111. The dropping back of SI was due to its leadership's failure to reformulate its conceptual framework so as to tolerate the different ideologies within SI that were socialism, Communism, and Islamism. This was also due to its leadership's failure to formulate the Islamic movement relevant to the national interests; please see: Kuntowijoyo, 1987, p. 134.

beginning of the set back of SI, as its members who aspired to the Fiqh paradigm moved to Nahdlatul Ulama.<sup>45</sup> In this regard, NU continued Sayyid Uthman's Fiqh approach toward the NEI government while SI tended to follow HOS Cokroaminoto's ideological paradigm.<sup>46</sup>

### **The NU traditionalist Muslims and their paradigm in relation to the Dutch colonial rule**

The establishment of NU on 31 January 1926 can be viewed as a response of the traditionalist Muslims to both the global and national situations of the Muslim communities (*ummah*).<sup>47</sup> In the global context, NU was organized to send its representative to King Abdul Aziz ibn Saud in Hejaz because the former was worried about the latter's intention of having *Wahabism*<sup>48</sup> as the state ideology. It was feared that this adoption of *Wahabism* may lead to intolerance to different understandings of Islam, namely the Fiqh paradigm, which maintains the classical school of Islamic law. King Abdul Aziz responded positively to some NU requests and was relatively tolerant to the existing schools of Islamic law as he did not want to lose political support from the followers of the Fiqh paradigm.

In the national context, NU was organized to limit the influence of the Muslim modernists such as the followers of Muhammadiyah and Sarekat Islam who supported the movement of purification by the Wahabis, besides their advocacy of the modernization of Islam.<sup>49</sup> As the consequence of the Congress of Islam in 1924, NU was pessimistic about the idea of an Islamic state when the Muslim modernists would not tolerate any representative from the traditionalist Muslims to the caliphate congress. NU, then, was only concerned with the idea of the independence of Indonesia, although this idea was not a formal decision of this organization. Accordingly, NU leaders were willingly to develop cooperation with the secular nationalists, besides trying to develop a better understanding with the Muslim modernists. This establishment of NU also inferred that the traditionalist Muslims did not agree with the idea of transforming Sarekat Islam into both a political and religious organization which might be detrimental to Islam. Consequently, NU, organizationally, did not want to challenge the NEI government as it meant contrasting Islam to the state. However, NU respected its personal members in their involvement of nationalist

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<sup>45</sup> Kuntowijoyo, 1987, p. 134.

<sup>46</sup> Kaptein, 2007, p. 111.

<sup>47</sup> Other traditionalists also established similar organizations: *Mathla'ul Anwar*, which was established in 1916 in Menes, Banten; *Persatuan Umat Islam* which was established in 1917 in Majalengka, West Java; *Persatuan Tarbiyah Islamiyah* which was established in 1926 in Minangkabau, West Sumatera; *al-Jami'iyatul Washliyah* which was established in 1930 in Medan, North Sumatera; *al-Khayrat* which was established in 1930 in Palu, Central Sulawesi; *Nahdlatul Wathan* which was established in 1934 in Lombok; and *Darud Da'wah wal-Irsyad* which was established in 1938 in Kendari, South Sulawesi Selatan. Compared with the above mentioned, traditional Islamic organizations, NU was the biggest as well as the most progressive one.<sup>47</sup>

<sup>48</sup> Wahabism was the religious purification based on scriptural understanding of the Qur'an and Hadiths so they were opposed to any activities considered as being *takhayul* (belief in superstitions), *bid'ah* (religious innovation) and *churafat* (myth), considered as the cause of the Muslims' decadency.

<sup>49</sup> Noer, 1985, pp. 246-248. NU was established on 31 January 1926, but in 1927 it just formulated its objectives which were signed on 5 September 1929 and registered by the NEI government on February 1930. NU means the revival of the clerics and accordingly, the clerics have the final decision in NU as they understand well how to live in this worldly life in the view of Islam.

movement. The Fiqh paradigm enabled NU to differentiate religious legitimacy from political legitimacy, and, accordingly, this enabled NU to have devotion to Islam and to a non-Islamic state.<sup>50</sup>

Being traditionalist Muslims did not mean that they were anti-modernization. They committed to modernizing their societies, but they wanted to preserve tradition, following the principle of the Fiqh paradigm, namely "*al-mukhafadzatu bil-qadimish-shalih wal-akhdzu bil-jadidil-ashlah*", meaning maintaining the good old methods and adopting the new better methods. In line with this, they accepted Indonesian local cultures as a means for the manifestation of Islamic teaching and challenged the modernist Muslims who accused this adoption of Indonesian local cultures of diverting from the true Islam. Wahid believes that it was due to NU's denial of judging the societal system as a dichotomy of black and white, namely the dichotomy of Islam and non-Islam, but acknowledging the area in between: namely that NU made use of the existing societal system, including the political system, as a means of implementing Islam. In other words, NU did not see Indonesian local cultures as non-Islamic as it acknowledged an overlap between the societal system, namely the life in this world, and that of Islam, namely the guidance for a success life in hereafter. Accordingly, it is compulsory for Muslims to consider this worldly life, namely the societal system, including the political system.<sup>51</sup>

NU was concerned with politics in terms of a public order which constitutes a requirement for a religious order. Accordingly, NU was willing to accept the existence of the NEI government as a tool for establishing public order. Apart from the state only being a tool, it became compulsory in regard to its status as a tool for public order as a foundation for the establishment of religious order. NU viewed that what is important for religion is considered as compulsory; however, the state is not the main objective of NU. In this regard, NU was realistic towards worldly life and acknowledged that the societal system exists because of the realization of power in society.<sup>52</sup>

NU justified the NEI government because the traditionalist Muslims believed that it was the state, namely the government, which had the authority to establish public order, namely judging those who commit crime. Accordingly, it is not allowed for individual persons or a group to punish somebody else because it may directly lead to counter-violence. The supporters of the Islamic ideological paradigm often misunderstand this hadith: "Whoever observe wrongdoer, he/she should face it with his/her hand and if he/she is not able to do so, he/she should use his/her mouth to criticize him/her and still he/she is not able to do so, at his/her heart he/she should oppose him/her and it is the lowest level of faith (*iman*)."<sup>53</sup> What is meant by capability here is not physical strength to punish or hit, but capability based on Shari'a (Islamic law). Accordingly, it is the ruler who has the capability to

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<sup>50</sup> Ricklef, 2006, p. 1.

<sup>51</sup> Wahid, 1999b, pp. 154-155.

<sup>52</sup> Ricklef, 2006, p. 1.

punish those who commit crime; meanwhile, the Muslim people only have rights to explain about the truth and restrain themselves from engaging in any misconduct or crime.<sup>53</sup>

Recognizing the fact that there is no definitive form of Islamic state, KH Hasyim Asy'ari, Rais Akbar NU, was accommodative towards the NEI government because he was concerned with the 'social order' as the prerequisite for 'religious order.' NU justified the existence of the NEI government after the latter's success in destroying Sultanates, because this implied that the NEI government had the power to establish public order. It was in line with the Sunni tradition which considered that political chaos (*fitnah*) was undesirable and worse than one century under a tyrannical ruler, such as believed by al-Ghazali, Mawardi, and also Ibn Taymiyah, a cleric often referred to by Muslim modernists.<sup>54</sup> Responding to the issue of a tyrannical ruler, KH Hasyim Asy'ari referred to the Sunni tradition such as written by Imam Mawardi (991-1031M) in his book titled '*al-Ahkamus Sulthaniah*' which mentioned the hadiths narrated by Hisyam bin Urwah from Abi Shalil from Abu Hurairah r.a.:

After my death there would be some rulers who ruled upon you. The good rulers would rule with their wisdom and the bad rulers would rule with their wits. And you should hear and obey their orders. If they rule over you with wisdom, you are lucky and they are also lucky. If they rule over you with the wits, you are free from their responsibility.<sup>55</sup>

In regard to the political system, KH Hasyim Asy'ari believed that Islam does not regulate a special societal structure and system for Muslims to follow. It is logical based on the fact that Muhammad the Prophet intentionally left the issue of succession open and Muslims had the freedom to solve the problem independently because it was not a part of Islamic teaching. Accordingly, he had an open mind on the plurality of the existing societal system which can be infused with Islamic values, and considered the state was not the only acceptable societal system. In this regard, he followed the Fiqh paradigm which classified three categories of state that are: an Islamic state (*dar al-Islam*), a war state (*dar al-harb*), and a peace state (*dar al-sulfi*). Accordingly, he idealized an Islamic state that adopts Shari'a as the law of the state, apart from his belief in the plurality of Shari'a. Therefore, he was not ideological in terms of the political system because of its willingness to negotiate the form of the state based on the sociological context of the society.<sup>56</sup>

In 1936, NU categorized the NEI government as "peace state" because of three factors: Nusantara was previously ruled by Islamic kingdoms, the majority of its people were Muslim, and Islam was not in danger. Categorizing the Dutch East Indies into a peace state was based on a Fiqh paradigm such as interpreted by a Syafi'i jurist Syaikh Hasan al-Hadrami in his book *Bughyat al-Mustarsyidin* (those who get guidance).<sup>57</sup> NU should decide the

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<sup>53</sup> Wahid, 1999b, pp. 152-156.

<sup>54</sup> Khuluq, 2000, p. 110.

<sup>55</sup> Saefuddin Zuhri, 1987, p. 135.

<sup>56</sup> Khuluq, 2000, pp. 108-110.

<sup>57</sup> The followers of Sunni in India under the rule of British al held the Fiqh paradigm: Saeed, 2007, p. 21.

status of the Dutch East Indies because it is related to religious affairs, such as how to treat someone who was found dead in the forest. NU assumed he/she was a Muslim because Indonesia was an Islamic country and accordingly, he/she would be buried by Islamic injunction. Moreover, if NU classified the Dutch East Indies into a non-Islamic state, it implied that all facilities provided by the state for managing the Muslim affairs became illegitimate.

Accordingly, Muslim affairs handled by clerics at the Court of *Penghulu* became unjustifiable. If this is the case, it would cause religious disorder. By so doing, NU did not unify the leaderships of politics and religion. For example, the validity of marriage, as a religious affair, could not be mixed with political matters. If NU considered as adultery the marriage held by the above mentioned court of *penghulu*, it would have other implications related to issues of inheritance and children. Theologically, NU had based its *fatwa* on public reasoning about the interest of a religious Muslim rather than that of the abstract political interest.<sup>58</sup> In this regard, Abdurrahman Wahid thought that the above fatwa on the status of the Dutch East Indies was concerned with two important things for the existence of the state: a) Islam requires freedom to practice the religion as *conditio sine qua non* for the acceptance of Muslims to the existence of state; b) on other hand, Islam leaves state affairs such as the form of state, the governmental system, and political ideology to the historical process of the society of the country. These two things make it possible for Muslims to have devotion to Islam and to a non-Islamic state. In other words, its members are capable of having both nationalist and religious orientations at once.<sup>59</sup>

NU as represented by K.H. Hasyim took an accommodative approach toward the NEI government as a method of avoiding a break in public order as well as to avoid premature rebellion. He instructed his students not to challenge the NEI government overtly and he was not reactive to the Dutch, although once he received unjust treatment when in 1913 his pesantren was burnt by The Dutch. This evolutionary method was also developed by the other Traditionalist Muslims in Sumatera, in the case of the cancelation of the establishment of *Persatuan Pendidikan Islam Indonesia* (PPII). This was due to the Dutch colonial ruler not agreeing with using the word *Indonesia* in this organization and considering it no longer a religious organization but a political party. In this regard, PPII was the further development of *Persatuan Madrasah Tarbiyah* (1928) which then changed into *Persatuan Tarbiyah Islamiyah* in 1930. Another clear example was K.H. Ahmad Sanusi's low profile response to the Dutch colonial ruler which forced him to leave for Jakarta from his hometown Sukabumi because of his involvement in SI and his close relation with some nationalist leaders. In Jakarta, he was not involved in any political activities; instead, he was active in many educational, social, and publishing activities, which, then, in 1931 were incorporated into the institution of *al-Ittihadiyah al-Islamiyah* (*Kesatuan Islam*). As a result, he was released from his exile in 1934.

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<sup>58</sup> Suaedy, 2009, pp. 158-159.

<sup>59</sup> Ricklef, 2006, p. 1.

Politically, NU did not give strong support to the existence of this NEI government in regard to its policies which did not try to support the development of Islam as well as to identify with Islam. On the contrary, the NEI government tried to find legitimacy from the concept of the modern state emphasizing the episteme of liberal thoughts that advocates a secular state which is neutral towards the religions.<sup>60</sup> However, in practice, the NEI was not neutral to religion, but favoured the development of Christianity<sup>61</sup> and tried to halt the development of Islam by issuing some policies of Islamic affairs.<sup>62</sup> For example, it tried to incorporate Shari'a into *adat* laws and controlled the clerics' activities. Moreover, the government discriminated towards Islam and supported Christianity missionaries. It paid the priests and their staff highly, but it did not pay the clerics.<sup>63</sup>

Indeed, the NEI government also pursued discriminatory policies toward the majority of Muslim people so that the former did not receive strong political legitimacy from the latter. This discriminatory policy was manifested in the institution of the judiciary where *Landraad* was for the native people and *Raad van Justice* for the Dutch and those who were acknowledged as having the same status.<sup>64</sup> In this regard, *Penghulu*, the court of religion, was a part of the *Landraad* and the NEI government tried to reduce the authority of this court of religion and transferred it to the *Landraad*. First, it tried to reduce the scope of this office's affairs through the change of the name of the Court of Religion (*Priesterrad*) into the *Penghulu* Court (*Penghulu Gerecht*) in 1931. Second, in 1937 it reduced the authority of this office in dealing with inheritance cases and transferred them to the State Courts (*Landraad*). Apart from the NEI government's efforts of reducing the power of Islam clerics, there were less people filing inheritance cases with the State Courts and the majority filed their cases with the *Penghulu* Courts, but had to find the approval of the State Courts.<sup>65</sup>

Apart from the NU's acceptance of the NEI government, politically K.H. Hasyim Asy'ari did not want to identify with the Dutch. He encouraged the Muslims to build Islamic identity through cultural identity such as by not allowing the Muslims to imitate the Dutch customs. For example, he did not allow Muslims to put on ties.<sup>1</sup> He also did not send representatives to *Volksraad*, an institution similar to parliament, as he did not give political legitimacy to the NEI government.<sup>66</sup> KH Hasyim did not involve himself in political activities directly, but he prepared the students (*santri*) to take responsibility for political affairs in the future. He made efforts at fostering a feeling of nationalism amongst his students. He even trained former students who had dedicated their knowledge to society, when, periodically, they came back to his pesantren at certain times. These occasions were very useful for his

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<sup>60</sup> Gustomy, 2010, p. 120.

<sup>61</sup> Gustomy, 2010, p. 4 and 10.

<sup>62</sup> Gustomy, 2010, p. 10 and 123.

<sup>63</sup> Suminto, 1985, p. 35. The NEI government paid salary to the clerics just start at the end of 1930s as their apart of the secular judicative institution (*Landraad*).

<sup>64</sup> Post, 1997, p. 51.

<sup>65</sup> Ali, 1987, pp. 198-199.

<sup>66</sup> Effendi, 2010, pp. 89-97.

students because the latter had the chance of getting up-dated political information from around the country. It was not surprising that his students took the role of informal leaders focussing on religious activities with a nationalistic orientation. It was likely that NU positioned itself to play the role of civil society, which is accommodative, but critical toward the NEI policies. For example, 1937 KH Hasyim was reluctant to receive an award from C. O. van der Plas,<sup>67</sup> the governor of East Java, in 1937, when the latter visited his pesantren as a part of the latter's move to obtain sympathy from the traditional clerics. K.H. Hasyim also refused a financial subsidy for his pesantren.<sup>68</sup> In this regard, Wahid considers that NU's religious justification did not mean to limit its political struggle for improving the existing political system. It was possible for NU to remove its religious justification to the NEI government, such as later when NU no longer supported the existence of the NEI government, because NU considered the Republic of Indonesia had **more political justification** and consequently, NU sifted its religious justification.<sup>69</sup>

NU was a part of the nationalist movement which tried to guide the Indonesian societal system, including state system, based on the Fiqh paradigm which recognized the plurality of Shari'a. It was possible for NU's followers to have an idea of an Islamic state, but this should tolerate different understandings of Islam, besides recognizing the equal status of non-Muslims. Indeed, NU was very concerned with the plurality of Shari'a, following the Sunni tradition which recognizes some schools of Islamic jurisprudence. Its establishment in 1926 was to persuade the Muslim modernists in order to respect different understandings of Islam as these Muslim modernists advocated a monolithic Shari'a as a method for unifying all Muslims in the pursuit of the glory time of Islam. On the contrary, NU believed in the plurality of Shari'a as different areas had different cultures which constitute the context for the implementation of Islam. In 1927, through its second congress, NU issued a recommendation to the Netherland East Indies government for having approval from the local clerics upon the appointment of religious officer (*penghulu*). NU also required the religious officer (*penghulu*) should come from one out of the four existing Islamic schools of jurisprudence, namely the followers of the Sunni tradition.<sup>70</sup>

As a part of the nationalist movement, NU tried to develop a good understanding with the modernist Muslims in its pursuit of an independent state. As the leader of NU K.H. Hasyim Asy'ari always reminded Muslims, either from the traditionalists or the modernists to tolerate each other's views and to unite into joint action for the interest of all Muslims. In 1936 K.H. Hasyim paid a special attention to this problem when both accused each other of being unbelievers (*kafir*) and he delivered a speech *al-Mawa'iz* (Nasihat) at the NU congress

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<sup>67</sup> 1921-6 van der Plas had been the Netherlands Consul in Jeddah, where he had much contact with Indonesian pilgrims. 1927-9 van der Plas was Adviseur voor Inlandse Zaken. After Snouck Hurgronje, Van der Plas was one of the most influential architects of the NEI's Islam policies of accommodation and cooption, which were later perfected by Suharto

<sup>68</sup> Khuluq, 2000, pp. 111-112. Please see also, Saefuddin Zuhri, 1987, p. 168.

<sup>69</sup> Wahid, 1999b, pp. 152-156.

<sup>70</sup> Effendi, 2010, p. p. 144.

in 1937.<sup>71</sup> This congress was attended by the modernist Muslim leaders such as KH Mas Mansur, Umar Hubaisy, KH Faqih Usman of Muhammadiyah and Wondoamiseno, Dr. Sukiman, and Sastrawijaya of SI. They, then, tried to establish a federation which would coordinate the activities of Islamic organizations and respond to external threats.<sup>72</sup> This initiation was also a response to the establishment of GAPI (*Gabungan Politik Indonesia*) and PVPN (*Persatuan Vakbonden Pegawai Negeri*). On 21 September 1937, they successfully established MIAI which unified 13 Islamic organizations into one front.<sup>73</sup>

The establishment of MIAI provided Muslims the power to challenge any attacks which endangered the interest of Muslims. In 1937, both were unified to oppose some regulations detrimental to Islam, such as a draft of the Marriage Act 1931 which justified the idea of secular marriage; a Teacher Act of 1925 which required religious teachers to have permission from the head of regency; military inscription for Muslims; transferring the authority for managing alms (*waris*) from the Religious Court (*Pengadilan Agama*) into the Civil Court (*Pengadilan Negeri*); the ban on polygamy; and the divorce case only being valid through decree from the civil court.<sup>74</sup> Such a strong denial was recorded by Pijper who acknowledged it as a proof of the power of Islam. In this regard, Benda<sup>75</sup> affirmed that within three decades, this strong reaction reflected the power of Indonesian Muslims to challenge the interventions imposed by the Dutch colonial ruler.<sup>76</sup> These joint oppositions between the traditionalist and modernist Muslims to the Dutch colonial ruler did not imply that they had settled their different views on the state, but they were optimistic about resolving the problems by means of dialogues, besides being optimistic about their capabilities to control the development of the modernist Muslims.

## Conclusion

From the above discussion, I find that the traditionalist Muslims in Indonesia followed the Sunni tradition which would justify the existing political system: the Sultanates and the Netherland East Indies. They provided justification for any political system because they

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<sup>71</sup> Khuluq, 2000, pp. 62-63. This speech of *al-Mawa'iz* (Nasihat) was repeated continuously at the next congresses (*mukhtamar*) as it was not easy for having a good understanding between the traditionalist and modernist Muslims.

<sup>72</sup> Abdullah & Hisyam, 2003, pp. 181-182. It was as a medium amongst Muslim leaders for discussing the problems of Muslims (*littasawwur*). For that purpose, they were encouraged by the Quran verse Ali 'Imran 103 as their spiritual foundation, please see: Ma'arif, 1988, pp. 18-19.

<sup>73</sup> Benda, 1958. A part from the fact that the idea of MIAI came from NU did not join into MIAI organizationally, but individually through the membership of Dahlan and Abdul Wahab. It was due to NU's disagreement with the SI's claim of MIAI as the continuation of SI's idea of the Congress of Islamic Communities (*Konggres Umat Islam*), in which gave birth the idea of the Committee of Caliph which did not hear the voice of the traditionalists. However, in 1939 NU joined into MIAI and caused its reorganization and placed K.H.A Wahid Hasyim as its leader. At this time, Muslims had quite strong position to challenge any people or any groups who tried to dismiss Islam. Indeed, this unity was not solid as they united because of the external threat and they had not yet reached an agreement concerning the system of knowledge as the basis for mutual understanding.

<sup>74</sup> Benda, 1958, p. f.n. 90 p. 31.

<sup>75</sup> Benda, 1958, p. 89.

<sup>76</sup> Benda, 1958, p. f.n. 91 p. 31.

considered it as a tool for public order which constitutes a pre-requirement for a religious order. Their support for the existing political systems depended on the latter's capabilities to attract the political participation of Muslims. The Sultanates had the strongest religious justification because they tried to implement Shari'a, but it was not always the case with political justification for any Sultan. The Netherland East Indies had the less religious justification as they constituted a foreign political system, and, accordingly, the traditionalist Muslims still aspired to establish an independent state. Actually, their aspiration for an independent state were likely due to the Netherland East Indies's lack of political justification as the latter did not want to identify with Islam or to expand the Muslims' political participation.

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