



Why Not Indonesia an Islamic State? Constitutional Debate Concerning Religion-State Relation in A Muslim Majority Country

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Abstract: When Muslims are majority in a particular country, it is often linked to the adoption of Islam as the state official religion or Islam as the identity of the state i.e. “Islamic State.” Yet, this is not the case of Indonesia. Why did not the Indonesian constitutional drafters declare Indonesia as an Islamic state or at least recognize Islam as the state official religion in the first Constitution despite the fact that Indonesia is a Muslim majority country? What explains the above fact? This paper aims to answer these two important questions by employing two constitutional law approaches: constitutional history and constitutional deferral. Constitutional history aims to understand the original intentions of the framers of the first Constitution through studying the minutes of the 1st Constitution. Constitutional deferral concept is used to explain the formulation of state-religion relation in the provisions of the first Constitution. This paper argues the fact that the constitutional drafters did not expressly state Islam as the state official religion in the Constitution did not mean that they overlooked to discuss such an important topic, rather because they had diverse views on how to include religion-state relation in the constitution. The sharp ideological difference among constitutional drafters is likely the cause of the adoption of constitutional deferral -a method of drafting constitutional through somewhat general and abstract provisions. The use of constitutional deferral is favorable because it opens more opportunity among constitutional drafters to achieve consensus and get things done. In practice, Indonesia is not a country officially based on Islam, but substantially Islamic values live in Indonesia. This article contributes to the study of the relationship between state and religion in Indonesia, regarding the current and future background and dialectics.

Keywords: State and religion, constitutional deferral, constitutional making

|| Submitted: December 04, 2022

|| Accepted: April 06, 2024

|| Published: April 27, 2024

Abstrak: *Ketika Muslim menjadi mayoritas di suatu negara, seringkali dikaitkan dengan pengadopsian Islam sebagai identitas negara atau setidaknya Islam sebagai resmi negara. Namun, tidak demikian halnya dengan Indonesia. Mengapa para penyusun konstitusi Indonesia tidak menyatakan Indonesia sebagai negara Islam atau Islam sebagai agama resmi negara padahal Indonesia adalah negara dengan mayoritas Muslim? Apa yang menjelaskan fakta di atas? Tulisan ini bertujuan untuk menjawab dua pertanyaan penting tersebut melalui dua pendekatan hukum tata negara yaitu sejarah konstitusi dan constitutional deferral. Sejarah konstitusi digunakan untuk memahami maksud pembentuk konstitusi saat menyusun pasal terkait dengan relasi antara agama dan negara dalam UUD. Constitutional deferral digunakan untuk menjelaskan proses perumusan hubungan agama dan negara di dalam konstitusi. Tulisan ini berpendapat bahwa para penyusun konstitusi tidak secara tegas menyatakan Islam sebagai agama resmi negara dalam konstitusi bukan karena mereka lalai untuk membahas topik yang begitu penting, melainkan karena mereka memiliki pandangan yang beragam tentang bagaimana memasukkan hubungan agama dan negara dalam konstitusi. Perbedaan ideologis yang tajam diantara para penyusun konstitusi kemungkinan besar menjadi penyebab diadopsinya konsep constitutional deferral dimana ketentuan hubungan agama dan negara dalam UUD diatur dalam ketentuan yang umum dan abstrak. Constitutional deferral dianggap pendekatan yang paling memungkinkan bagi para penyusun UUD untuk mencapai konsensus dan menyelesaikan proses penyusunan UUD. Pada aplikasinya, Indonesia bukan sebagai negara yang resmi berdasar pada Islam, tetapi secara substansi nilai-nilai Islam hidup di Indonesia. Artikel ini memberikan kontribusi pada kajian tentang hubungan antara negara dan agama di Indonesia, tentang latar belakang dan dialektika saat ini dan yang akan datang.*

Kata Kunci: *Negara dan agama, penanggulangan konstitusional, pembentukan konstitusi*

Introduction

How to understand religion-state relationship in a constitution worldwide? The existing literatures on religion-state relation in a constitution has centered on two constitutional conceptions: the American conception and the French Model. The American constitutional conception separates church and state with the protection for the free exercise of religion. This concept commonly understood as designed to protect the autonomy of the religious sphere. French model on the other hand aims to protect the autonomy of public institutions from the influence

of religion.¹ In a broader context Pew Research center² finds four models: state with an official religion (a particular religion is expressly stated as official religion in the constitution); state with preferred religion (the government, through its policies, is favored one religion over others); states with no preferred religion (the government do not favor one or more religions over others); and states with a hostile relationship toward religion (the government limits the activities of religious group).

In slightly different category, IDEA international³ explains five possible relations between religion and state: strong secularism (a constitution expressly stated that the state to be secular. it is not recommended to show religious identity in public), weak secularism/state neutrality (the state does not endorse or criticism religion, yet allowing to wear religious expression in public), pluralist accommodation (the state accommodates religions and may cooperate with religious bodies in their social functions), recognition without establishment and religious establishment (a constitution formally acknowledges and recognize religion in its constitution).

In this modern world, there are at least three different models of Islamic Constitutions including Monarchy (Saudi Arabia, Brunei Darussalam, Morocco, Jordan), Federal arrangement (Malaysia), Republic (Egypt, Pakistan, Tunisia, Aljazair and Indonesia). There are two types Monarchies: Absolute Monarchy (Saudi Arabia, Brunei Darussalam) and Parliamentary Monarchy (Morocco, Jordan).⁴ The above-mentioned categories indicate that a constitution becomes an important document to determine the relation between state and religion. It is not uncommon that a constitution regulates the relationship between religious and state authorities. While expressing religious identification in a constitution shows constitutional recognition concerning religion, doing so must be very careful because it potentially affects the right of religious minorities.

The important question is then, why does particular country adopt secularism while others acknowledge an official religion in their constitutions? There is no short easy answer to this question. There are many aspects that may be involved in drafting a constitution. These include the interest of the constitutional drafters, the interest of politicians, and the demand of the people.

¹ Elisabeth Zoller, 'Laïcité in the United States or The Separation of Church and State in Pluralist Society', *Indiana Journal of Global Legal Studies* 13, No. 2, Article 10 (2006).

² Pew Research Center, 'Many Countries Favor Specific Religions, Officially or Unofficially' (USA: Pew Research Center, 3 October 2017), <https://www.pewresearch.org/religion/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/>.

³ Dawood Ahmed, *Religion-State Relations*, Second Edition (Sweden: International Institute for Democracy and Electoral Assistance (International IDEA), 2017), <https://www.idea.int/sites/default/files/publications/religion-state-relations-primer.pdf>. p. 8-12

⁴ Ali Sodikin and Anwar M Radiamoda, 'The Dynamics of Islamic Constitution: From the Khilāfah Period to the Nation-State', *JIL: Journal of Islamic Law* 2, no. 2 (2021), p. 138–167.

All these different parties may have different interests and proposals in drafting the constitution. In a country where specific religion is dominant and is tied to national identity, it is likely that its constitution established a particular religion. However, this is not the case in a country with significant religious diversity. In such circumstances, it is unlikely to state a particular religion as official religion in the constitution. State neutrality or pluralist cooperation may be preferred in this particular context. It is safe to say that the above mentioned reflects the general trend.

While the above description may be valid to portray the general tendency, is such trend applicable to Indonesia? This paper argues the opposite. While Indonesia can be seen as a country with Muslims majority, Indonesian constitutions never states Islam is the official religion of the Country. Why did not the drafters of the constitution declare Islam as the state official religion considering that Muslims are majority in Indonesia? What are the contributing factors involved in drafting the provision on religion-state relation? These two important questions will be addressed in this paper. This paper is expected to complement the current discussion concerning the relation between religion and state by showing the unique case of a Muslims majority country yet it is not an Islamic country. Some scholars describe Indonesia as neither secular nor an Islamic country. Ahmad Syafii Ma'arif, Endang Saifuddin Anshari and Arskal Salim provide important information regarding the relation between religion and state. Ahmad Syafii Ma'arif in his book *Islam, Humanity and The Indonesian Identity* explains how complicated is the constitutional drafting of the first constitution specifically when debating, negotiating and drafting the state-religion relation in the constitution.⁵ This is because there are two differing views regarding whether it is necessary to include any specific reference to a particular religion. Endang Saifudin Anshari further states that the adoption of Djakarta Charter was the reflection of nationalist and religious groups negotiation.⁶ Arskal Salim emphasizes that the committee drafting Djakarta Charter shows a balance of members representing secular and Islamic ideology.⁷ This paper will enrich the above-mentioned discussion by inserting constitutional deferral concept to analyze the formulation of religion-state relation in the provision of the constitution.

This paper is structured as follow: Part I explains the existing literatures concerning religion-state relation worldwide. This explanation is important to

⁵ Ahmad Syafii Maarif, *Islam, Humanity and the Indonesian Identity: Reflections on History*, trans. George A. Fowler (Leiden University Press, 2018), p. 140

⁶ Endang Saifuddin Anshari, *Piagam Jakarta, 22 Juni 1945: Sebuah Konsensus Nasional tentang Dasar Negara Republik Indonesia (1945-1959)*, Edisi 3 (Jakarta: Gema Insani Press, 1997).

⁷ Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaii Press, 2008), p. 64.

understand various relations between religion and state across the globe. The religion-state relations typology will be used to understand Indonesia's position along this continuum. In addition, this Part will also discuss existing literatures on constitutional deferral. Constitutional deferral is an approach where constitutional drafters tend to draft the constitution in somewhat general and abstract way as opposed to go to the details. This technic, based on the author observation, is significant to explain the drafting of constitutional provisions concerning religion-state relation in the first constitution. Part II analyses the composition and the profiles of the constitutional drafters particularly their religious background and education. This analysis is crucial to understand whether the constitutional drafters background significantly influence the formulation of religion-state relation provision. Part III examines the drafting technic on religion-state provision during constitutional drafting. Part IV concludes.

Existing literature provides various explanations regarding the relation between religion and state. *Constitutions and Religion*⁸ edited by Susanna Mancini analyses various aspects on constitutionalism and religion ranging from history, concept and theories; models of regulating religion and state; the constitution and politics of religion in comparative perspective. Chapter on *Religion in constitution-making processes: comparative perspectives* written by Francesco Biagi examined how religion-state relation is inserted in the constitution in various countries. He analyses several factors which may influence the relation between religion and state. This includes the actors involved in constitutional drafting such as political parties, religious institutions, religious minorities and civil society. His piece also studies the different types of constitutional drafting processes, constitutional history and tradition, and possible external factors.⁹ Muhammad Ali Safa'at further explains the state-religion relations in the eyes of the constitutional court.¹⁰ Using the Indonesian Constitutional Court rulings as the focus of study, the paper finds that the patterns of relations between the state and religion in the statutes is dynamic.

Asli ü. Bâli and Hanna Lerner in *Constitution writing, Religion and Democracy*¹¹ analyses how constitutional writing and religion are linked particularly when it occurred in various context ranging from Middle East to South Asia. What roles do the constitutional drafters play in anticipating

⁸ Susanna Mancini, ed., *Constitutions and Religion*, Research Handbooks in Comparative Constitutional Law Series (Cheltenham, UK; Northampton, MA: Edward Elgar Publishing Limited, 2020).

⁹ Susanna Mancini, *Constitutions and Religion...*, p. 253.

¹⁰ Muchamad Ali Safa'at, 'The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations', *Constitutional Review* 8, no. 1 (2022), p. 113.

¹¹ Ash Ü. Bâli and Hanna Lerner, eds., *Constitution Writing, Religion and Democracy*, 1st ed. (Cambridge University Press, 2017).

disagreement when discussing the religious character of the state? How is religion discussed by the framers of the constitution?¹²

In the context of Islamic country, Rachel M. Scott has written *Recasting Islamic Law: Religion and the Nation State in Egyptian Constitution Making*.¹³ This book explains how in Muslim majority country like Egypt, religion becomes an important issue when it comes to inserting it in the constitution. Interestingly, the first Egypt Constitution of 1882 did not contain any reference of basic principles about Islam. It is the 1923 Constitution which declared Islam as the religion of the state. The declaration of Islam as state religion did not invite significant opposition. It is believed that such constitutional provision adequately protected the interest of many.¹⁴

Dian A H Shah's article on *The Law and Politics of Religion and Constitutional Practices in Asia*, published in *Asian Journal of Comparative Law*¹⁵ examines the relation between religion and state particularly in drafting the constitution in selected countries in Asia. Her article explores the relationship between religion, constitutional democracy and the rule of law. Her piece highlights various constitutional articles concerning religion-state relations ranging from India's 'secular' position and the Philippines' American-style separation of church and state, to Afghanistan's arrangement mentioning Islam as the state religion.¹⁶ She analyses that the constitutional arrangement on religion may be implemented in unpredictable way.

Paul Weithman introduced three different models regarding state and religion relation. they are separation, unification and recognition. Separation provides strict division between state and religious domain. There is "a sharp distinction between secular and sacred, state and church."¹⁷ Unification, on the other hand, is a model where the state and religion are integrated and overlapped. There is no clear border between the two. Recognition is where the state maintains a certain degree of preservation of religion and religious values within its legal system.¹⁸

¹² Bâli, and Lerner, *Constitution writing, religion ...*, p. 2.

¹³ Rachel M. Scott, *Recasting Islamic Law: Religion and The Nation State in Egyptian Constitution Making* (Ithaca London: Cornell University Press, 2021). Mahdi Syahbandir, et.al., "State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh," *Ahkam: Jurnal Ilmu Syariah* 22, No. 1 (2022), p. 161–184.

¹⁴ Scott, Rachel M. *Recasting Islamic Law...*, p. 65.

¹⁵ Dian A H Shah, 'The Law and Politics of Religion and Constitutional Practices in Asia', *Asian Journal of Comparative Law* 13, no. 2 (2018). p. 207-218

¹⁶ Dian A H Shah, *The Law and Politics of Religion ...*, p. 210.

¹⁷ Paul J. Weithman, *Religion and Contemporary Liberalism* (Notre Dame (Ind.): University of Notre Dame press, 2009).

¹⁸ Weithman, *Religion and Contemporary Liberalism...*, 1997.

Finally, a more recent study Ran Hirschl,¹⁹ concludes that the state-religion relation today can be described as constitutional theocracy in which a constitution contain four important elements, they are: (1) the adoption of core elements of modern constitution; (2) the existence of a single religion or religious denomination that is endorsed by the state i.e. state religion; (3) the law and judicial interpretation may not infringe the state endorsed religion; and (4) religious bodies and courts are granted official jurisdictional status.

This paper will utilize the above-mentioned literatures to understand the general tendency on religion-state relation in time of constitutional writing. The paper will contribute to the above-mentioned discussion by specifically analyzing the Indonesian experience in drafting religion-state relation in its constitutions. Indonesia experience may provide different explanation against the general tendency. The fact that Indonesia is Muslim majority country does not mean that it will declare Islam as the state official religion in its constitution. In fact, the Constitutions of Indonesia do not contain word such as “Islam”, “Muslim” or “Shariah.” Yet, it mentions the general term such as “religion,” “belief” or “worship” but it does not refer to particular religion or belief.

Before discussing constitution making process, it is important to understand why a country make a constitution. Mark Tushnet in *Constitution-making: An Introduction* explain several reasons: For international community, it is regarded as a prerequisite to state hood. It also reflects nation’s symbol. Finally, a constitution serves as an expression of national unity. Constitution-making process therefore should be inclusive. The conclusiveness can be reflected in adequate representatives, or “crowdsourced” where people may use different sources including social media websites adopted by constitutional drafters to express their opinions regarding the draft of the constitution.²⁰ This method provides wider opportunity for members of community to actively participate in constitution making process. Active and wider public participation is important because a constitution is somewhat a modern social contract.

Another important discussion is who should make the constitution. Jon Elster and Bruce Ackerman²¹ believe that it is important to create specialized constituent assemblies in making a constitution.²² It may prevent the involvement of short-term political interests. For Nathan Brown, short term interests are

¹⁹ Ran Hirschl, *Constitutional Theocracy* (Cambridge, Mass: Harvard University Press, 2010). p. 3

²⁰ M. Tushnet, ‘Constitution-Making: An Introduction’, *Texas Law Review* 91 (1 January 2013), p. 1983-2013.

²¹ Bruce A. Ackerman, *We the People. 1: Foundations*, 1. Harvard Univ. Press paperback ed (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 1993).

²² Jon Elster, ‘Forces and Mechanisms in the Constitution-Making Process’, *Duke Law Journal* 45, no. 2 (1995), p. 364

inevitable in constitutional drafting.²³ Edward Mc Whinney in *Constitution-Making: principles, Process Practice*, explains in what circumstances a constitution should be made. Drafting a constitution should be carried out when a country reaches its maturity both in politics and legal aspects.²⁴ Other scholars including Vernon Bogdanor argues that in fact it is common that a constitution is made in time of crisis.²⁵ For instance, when a regime is about to collapse, the need to adapt with the new situation or when there was a financial or political crisis. Crisis often opens possibility to renew or reform a constitution. The above-mention literature will be used to understand the Indonesian experience when writing its first constitution in 1945.

Drafting a constitution is far from easy since it aims to regulate many different aspects of a country including the state structure, the relation among state institutions, the state- citizens relations and many more. It is more challenging because it is often coupled by many different interests of the society, the drafters and politicians. Constitutional deferral is one strategy that maybe utilized to addressed religion-state relation. There are two other constitutional tools that can be used by constitutional drafters to address religion-state relation. They are: (1) institutional solutions such as federalism, special group rights, power sharing and (2) legal pluralism.²⁶ Institutional design such as recognizing special group rights, power sharing mechanism or the adoption of a variety of electoral rules maybe an appropriate approach to reallocate of power and resources when the religious groups are concentrated in distinct and geographically separate areas.²⁷ When religious groups are territorially concentrated various forms of federalism and devolution may be effective.²⁸

When there is huge diversity in societal structure such as religions, customs, and ethnicities, achieving consensus when drafting a constitution is far from easy. In such situation, it is unlikely that the framers of the constitution will go to the details when determining religion-state relation in the Constitution. This is because doing so will potentially create disagreement or tension among the constitutional drafters. The constitutional drafters will likely include somewhat abstract and general provisions as opposed to go to the details. This is because

²³ Nathan J. Brown, 'Mrs. Lincoln's Egyptian Constitution' (Washington DC: Carnegie Endowment for International Peace, 20 August 2013), <https://carnegieendowment.org/2013/08/20/mrs.-lincoln-s-egyptian-constitution-pub-52722>.

²⁴ Edward McWhinney, *Constitution-Making: Principles, Process, Practice* (Toronto [Ontario]: University of Toronto Press, 2019).

²⁵ Vernon Bogdanor and Policy Studies Institute, eds., *Constitutions in Democratic Politics* (Aldershot, Hants, England; Brookfield, Vt., USA: Gower, 1988). p. 380

²⁶ David E. Landau and Hanna Lerner, eds., *Comparative Constitution Making*, Research Handbooks in Comparative Constitutional Law (Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2019). p. 270

²⁷ Bali and Hanna Lerner, "Religion and constitution..." p. 269

²⁸ Bali and Hanna Lerner, "Religion and constitution..."

doing so avoid tension and help the constitutional drafters to achieve consensus. This approach commonly called constitutional deferral. Constitutional deferral corresponds to what David E. Landau and Hanna Lerner characterize as an incrementalist approach to constitution making.²⁹ This means that the drafters intentionally to avoid clear cut choices between competing perception concerning religious issues. They rather choose not to deal with the details. The Constitutional deferral can be seen in three different forms: (1) adopting vague constitutional language; (2) using specific language that expressly delegates issues to lawmakers and (3) stipulating two or more constitutional provisions which in conflict.³⁰ Constitutional deferral approach above-mentioned will be used to understand method utilized by the first constitutional drafters in writing provisions concerning religion-state relation.

Who are the Drafters of the First Constitution?

The content of a constitution often reflects the interests or the ideologies of parties who involved in constitutional drafting.³¹ As a result, it is likely that the substance of a constitution tends to mirror the interest of those who have dominant powers in the constitutional drafting.³² This Part will analyze the composition of the constitutional drafters to understand whether their interests are sufficiently accommodated in the constitution. The first Constitution of Indonesia was drafted by a committee called the BPUPK (*Badan Penyelidik Usaha Persiapan Kemerdekaan*) or the Investigating Body to Prepare the Independence of Indonesia. This body consists of 63 members. They are not democratically elected by the people. They were selected by the Japanese colonial government. The Committee composition is somewhat diverse including their religions and ethnicities. With regard to their ethnicities, the majority of the committee members are Javanese. In detail, the Committee consists of 40 Javanese, 7 Sundanese, 4 Tionghoa, 3 Minangkabau, Madura 2, Batak 1, Indo 1, Arab 1, Banten 1, Lampung 1, Ambon 1 and Minahasa 1. Regarding their religion, the majority of committee members are Muslim. only 8 out of 63 are Non-Muslim (Christian and Buddhist).³³

In drafting the constitution, at least four members of the BPUPK worth the be deeply discussed because they were deeply involved in formulating

²⁹ Bali and Hanna Lerner, "Religion and constitution..." p. 270.

³⁰ R. Dixon and T. Ginsburg, 'Deciding Not to Decide: Deferral in Constitutional Design', *International Journal of Constitutional Law* 9, no. 3-4 (2011) p. 683.

³¹ Sujit Choudhry and Mark Tushnet, 'Participatory Constitution-Making: Introduction', *International Journal of Constitutional Law* 18, no. 1 (2020). p. 175.

³² Sujit Choudry and Mark Tushnet, Participatory p. 175.

³³ Ananda B. Kusuma, *Lahirnya Undang-Undang Dasar 1945: memuat salinan dokumen otentik Badan Oentok Menyelidiki Oesaha Persiapan Kemerdekaan* (Depok: Badan Penerbit, Fakultas Hukum, Universitas Indonesia, 2004).

constitutional provisions concerning religion-state relation. They are Ki Bagoes Hadi Koesoemo, Soekarno, Hatta, and Latuharhary. Ki Bagus Hadi Koesoemo (Wachid Hasyim and Agus Salim) were representing Islam.³⁴ They proposed to insert the word “Islam” in the Constitution. Ki Bagus Hadi Koesoemo³⁵ is particularly important because he is the one who persistently believe that it is essential for a constitution to put reference to Islam. Ki Bagus Koesoemo was born in Yogyakarta. He obtained religious education from his parents and religious teachers including KH Ahmad Dahlan (the founder of Muhammadiyah, one of the largest Islamic organizations in Indonesia). Muhammadiyah however is not a political party. In 1938, Ki Bagoes Koesoemo established Indonesian Islamic Party (PII). In addition, he also participated in establishing Majelis Syuro Muslimin Indonesia (Masyumi) in 1942. In line with Ki Bagus Hadi Koesoemo, other BPUPK member KH Abdul Kahar Muzakir also supported the implementation of Islamic teachings in Indonesia. Abdul Kahar Muzakir was born in Yogyakarta. He spent his first two years in elementary school in Muhammadiyah then moved to several Islamic Boarding Schools (*pesantren*) in Central Java. He continued his study on Islamic law, Arabic and Hebrew in Cairo University.³⁶ In 1938, He joined Indonesian Islamic Party (PII). In 1944 he was appointed as one of the drafters of the first constitution.³⁷

Soekarno and Hatta who are also Muslims are also significant to be analyzed because the two are Muslims, yet they disagreed with the idea to put reference on Islam in the constitution recognizing that Indonesians are not all Muslims.³⁸ There are other religions and beliefs which also existed in Indonesia. Soekarno played important roles in the struggle for Indonesian independence and the early stage of the nation’s establishment. Soekarno had the Netherlands educational background a country where he developed his nationalism sense and his desire for Indonesia’s independence from Dutch colonial rule.³⁹ His charisma and strong leadership mad Soekarno an important individual during the Indonesian National Movement. Hatta is from West Sumatra.⁴⁰ He spent his basic

³⁴ Kusuma, *Lahirnya Undang-Undang Dasar 1945*.

³⁵ Iswara N Raditya, ‘Sejarah Kandasnya Gagasan Negara Islam Ala Ki Bagus Hadikusumo’ (Jakarta: Tirto.id, 16 May 2019), <https://tirto.id/sejarah-kandasnya-gagasan-negara-islam-ala-ki-bagus-hadikusumo-dD9m>.

³⁶ Mitsuo Nakamura, ‘Prof. H. Abdul Kahar Muzakkir and The Development of Islamic Reformist Movement in Indonesia’, *Afkaruna* 15, no. 2 (2019). p. 206-207.

³⁷ Mitsuo Nakamura, Prof. H. Abdul Kahar Muzzakkir and the Development....., p. 206-207.

³⁸ Kusuma, *Lahirnya Undang-Undang Dasar 1945*.

³⁹ B. B. Hering, *Soekarno: Founding Father of Indonesia, 1901-1945*, Verhandelingen van Het Koninklijk Instituut Voor Taal-, Land- En Volkenkunde 192 (Leiden: KITLV Press, 2002).

⁴⁰ Lukman Hadi Subroto, Tri Indriawati, ‘Biografi Moh Hatta, Wakil Presiden Pertama Indonesia’ (Jakarta: Kompas.com, 23 August 2022),

education in Indonesia. He continued his study in Rotterdam, the Netherlands to study economics. His European educational background seems influence Hatta's way of thinking. He was active in an organization called Jong Sumatranen Bond. He also joined an organization to fight the Dutch Colonial Government. These political activities often brought Hatta to jail. He was elected as deputy of the Committee of the preparation of the Indonesian Independence (the PPKI). Latuharhary (and Maramis) are representing Christian and nationalists. Latuharhary is a lawyer from Moluccas.⁴¹ He was Leiden University Graduate. He joined an organization called *Perkumpulan Politik Kebangsaan Indonesia*. He also joined a political party *Partai Indonesia Raya (Parindra)*. Maramis was from Manado. He was a lawyer and also the Netherlands Graduate.⁴² Latuharhari is the one who disagree with the adoption of Islam and the *Piagam Jakarta* in the Constitution.⁴³ They believe it is better not to put any reference to particular religion. The constitution should treat all religions equally.⁴⁴ It is better if Indonesia separate religion and state affairs in the sense that the government does not too far interfere the religious affairs to its citizens.⁴⁵

Apart from their ethnicities and religion, the educational background of the BPUPK members also diverse, the majority of the BPUPK members had been educated in western Europe or had attended schools that were based on the Dutch educational system.⁴⁶ Their educational background influenced the way they drafted the constitution. For example, they included important constitutional principles which closely associated with Western ideas such as limited government, rule of law and distribution of powers. Such influence is also seen from the language they used in the constitution. For instance, the constitution expressly mention words or phrases like *droit constitutionnel, loi constitutionnelle, geistlicher hintergrund, rechtsidee, gestaltung, machtstaat, Die gesamte staatsgewalt lieght allein bei der Majelis, Vertretungsorgan des Willens des Staatsvolkes, neben, untergeordnet, concentration of power and responsibility upon the President, Gezetsgebueg, Staatbergroting, pouvoir reglementair,*

<https://www.kompas.com/stori/read/2022/08/23/120000479/biografi-moh-hatta-wakil-presiden-pertama-indonesia?page=all>.

⁴¹ Tim Redaksi Hukumonline, 'Jalan Mr. Latuharhary, Mengenang Tokoh Hukum Dari Saparua' (Jakarta: Hukum Online, 22 September 2009), <https://www.hukumonline.com/berita/a/jalan-mr-latuharhary-mengenang-tokoh-hukum-dari-saparua-hol23186/>.

⁴² Virginia Maulita Putri, 'Profil AA Maramis, Perumus Piagam Jakarta Yang Jadi Pahlawan Nasional' (Jakarta: detikNews, 11 August 2019), <https://news.detik.com/berita/d-4777278/profil-aa-maramis-perumus-piagam-jakarta-yang-jadi-pahlawan-nasional>.

⁴³ Kusuma, *Lahirnya Undang-Undang Dasar 1945*.

⁴⁴ Kusuma, *Lahirnya Undang-Undang Dasar 1945*.

⁴⁵ Kusuma, *Lahirnya Undang-Undang Dasar 1945*.

⁴⁶ M.P.B. Manus., et.al, *Tokoh-Tokoh Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia* (Jakarta: Departemen Pendidikan dan Kebudayaan, 1993).

eenheidstaat, staat, zelbesturende landschappen, volksgemeenschappen, village, begrooting, and noodverordeningsrect.

In the end, the work of the BPUPK was followed up by a smaller committee called the PPKI -*Panitia Persiapan Kemerdekaan Indonesia*- the Preparatory Committee for Indonesian Independence the PPKI which consists of 27 committee members finalizes the work of the BPUPK to be inaugurated August 18, 1945. Considering the committee above-mentioned profiles, it can be said that the composition of the BPUPK is far from ideal and somewhat undemocratic since all the BPUPK members is not based on election.

In drafting provisions on religion-state relations, it is important to analyze whether or not the BPUPK put certain reference to particular religion, considering the majority of the BPUPK members are Muslims. In doing so, the paper utilizes two constitutional law approaches namely historical approach and constitutional deferral. Historical approach will be utilized to understand the original intentions of the framers of the first constitution when formulating provision on stat-religion relation. This will be done through a comprehensive study of all relevant documents including the minutes of the BPUPK and PPKI meetings when formulating the Constitution and constitutional law scholars' writings concerning the formulation of state-religion relation in the constitution. Constitutional deferral concept will be used afterward to interpret why did the drafters of the first constitution choose to write brief, general, and abstract provisions than write detail, comprehensive and concrete provisions concerning state-religion religion. Constitutional deferral seems to be an appropriate approach to respond this question. The following Part will examine how historically the framers of the constitution formulate provisions concerning religion-state relation in the constitution.

How did the drafters write the religion-state relation provision in the constitution?

Prior to discussing religion-state relations in drafting the first constitution, existing literatures provides three different paradigms: Integralistic, Secularistic and Simbiotics.⁴⁷ Integralistic perspective assumes that religion and state are one unified entity that cannot be separated because they are two unified entity. Secularistic separates religion and state. Legal norm is determined based on human consensus. It does not necessarily base on religion. While secular separates state to religion, in secular state allows society to freely embrace religion. Secular assumes that there are no specific verses of the holy book which put obligation to form government and state. Simbiotic rejects the assumption that Islam owns its specific state system rather believe that Islam consists of a group of values and

⁴⁷ Cecep Supriadi, 'Relasi Islam Dan Negara: Wacana Keislaman Dan Keindonesiaan', *Kalimah: Jurnal Studi Agama Dan Pemikiran Islam* 13, No. 1 (2015), p. 210-212.

ethics for nationhood. State-religion relation is mutually needed and reciprocally important. A state needs religion because religion helps state in developing moral, ethics and spirituality. Religion on the other hand requires state as an instrument to develop and maintain the existence of religion.⁴⁸ Within these perspectives, Indonesia can be defined into symbiotic because Indonesia does not define Islam as official state religion. Indonesia does not adopt Syariah Law as the primary source of law. Islam is not political ideology and governmental system.

For Indonesia, political ideology can be explained into three deferent models: Islamic democracy, religious democracy and Liberal democracy. Islamic democracy supported by Natsir based on the premise that Islam as state ideology should be adopted while still accepting the existence of modern political values. Islam is a comprehensive value to regulates human relations and for that it fits with all situation. This perspective is based on two reasons: First sociologically Majority of Indonesians are Muslims. Second, Islam is a comprehensive and complete doctrines. Religious democracy does not require Islamic identity expressly declared rather it is necessary to adopt the values of Islam such as Justice, Equality and freedom. Liberal democracy emphasizes political affairs should be discussed and carry out beyond religion affairs.

Religion-state relation is one out of many contentious topics in drafting the first Constitution. Two important issues related to religion-state relation in the constitutional drafting: (1) whether the Preamble of the Constitution mention any reference to particular religion and (2) whether the body of the constitution stipulate specific religion as an official religion. For some Islamists, the idea to adopt Islam as the state ideology is not a new idea. This idea come up when the founding fathers drafted the first constitution.⁴⁹ Two differing opinions come up in the constitutional drafting i.e. those who prefer to put a reference to particular religion and those who choose to separate religion to state. This can be seen from Soepomo's statement (member of constitutional drafters /the BPUPK), "here it can be seen that there are two different views. The religious clerics suggested that Indonesia should be an Islamic state. Another view suggested that (Indonesia) should be a national unity state which separate between state and Islam, in other words it is not an Islamic state."⁵⁰

Ki Bagus Hadikoesoemo,⁵¹ representing those who believe that Indonesia should adopt Islamic state, explained the importance of adopting Islamic state as the foundation of Indonesia. Using the example of Prophet Muhammad, he said

⁴⁸ Cecep Suriadi, "Relasi Islam dan Negara...", p. 210-212. Abidin Nurdin, "Dialectics In Relationship Between Religion and State: A Correlation of Religious Principles and Ideals of Law In Indonesia," *Al-Bayyinah: Journal of Islamic Law* 4, No. 1 (2020).

⁴⁹ Ahmad Syafii Maarif, *Islam Dan Masalah Kenegaraan: Studi Tentang Percaturan Dalam Konstituante*, cet. 1 (Jakarta: LP3ES, 1985). p.101-110.

⁵⁰ Kusuma, *Lahirnya Undang-Undang Dasar 1945....*

⁵¹ Member of the BPUPK who support religion should be the reference of the country

that in establishing a country and society it is necessary to adopt religious teaching. He further explained that Iman (belief), ibadah (prayers), and amal (deed) should be implemented in Indonesia. This will make Indonesia a prosperous country. This idea is supported by Soepomo who stated in BPUPK meeting July 15, 1945 that the first Constitution is established based on Djakarta Charter and not based on *staatsidee Negara Integralistik*. Soepomo further acknowledge that Muslims are majority in Indonesia.⁵² Therefore, the Preamble of the Constitution contains provision which requires to carry out Islamic Shariah for its adherents. He further said that this declaration is the result of negotiation between nationalists and religious groups.⁵³

In addition to the Preamble of the Constitution, Wachid Hasjim, Agus Salim (representing Islam) and Latuharhary and Maramis (representing nationalists) agreed that the body of the Constitution stipulates articles on religion: "State is based on God with obligation to carry out Islamic Syariat to its adherents."⁵⁴ They believe that mentioning similar provision in the body of the Constitution is important.

Ki Bagoes Hadikoesoemo explains many aspects of Islam and its importance to be accommodated in the Constitution. He cited some Al Quran verses and Prophet Mohammad sunnah.⁵⁵ He stated that Islam builds fair and just government based on democracy, deliberation and religious freedom.⁵⁶ He further questioned why in the past Islam is only formally acknowledged in Indonesia considering 90% Indonesia citizens were Muslims. He concluded that Islam was not substantively recognized in the past because there was an intention not to appropriately introduce Islam and this is not because of the teaching of Islam. For him, Islam builds sense of nationality and independence. Therefore, he believed, Islam should be the foundation of the country. In the end of his speech, he emphasizes it is essential to accommodate the voice of Muslims as they occupied 90% of Indonesian populations.

On June 1 1945, Soekarno, who is also Muslim, said that the foundation of the country is based on nations' spirit. This spirit may unify all Indonesians. He put strong emphases on the close relation between people and the land. He introduced five fundamental principles that may be adopted by Indonesia in governing the country. Such principles include: Indonesian national unity (*kebangsaan Indonesia*), humanitarianism (*kemanusiaan*), democracy through *mufakat* (*consensus*) and *musyawarah* (*deliberation*), social justice (*keadilan*

⁵² Kusuma, *Lahirnya Undang-Undang Dasar 1945....*

⁵³ Saifuddin Anshari, *Piagam Jakarta, 22 Juni 1945: Sebuah Konsensus Nasional Tentang Dasar Negara Republik Indonesia (1945-1959)*, Edisi 3 (Jakarta: Gema Insani Press, 1997).

⁵⁴ Kusuma, *Lahirnya Undang-Undang Dasar 1945....*, p. 140-143.

⁵⁵ Kusuma, *Lahirnya Undang-Undang Dasar 1945...p 140-143,*

⁵⁶ Kusuma, *Lahirnya Undang-Undang Dasar 1945...p 142.*

sosial) and Belief in God (*Ketuhanan*). Since then June 1st, 1945 is marked as “the birth of Pancasila (the five Precepts).

On June 2, 1945 a small group consists of nine prominent individuals meet to insert these important principles into the Preamble of the Constitution. This “Committee of Nine” consists of a balance of members representing secular and Islamic position.⁵⁷ The Committee agreed to include these five precepts. The first precept written in the Constitution was “Belief in God with the obligation to implement the Sharia for adherents of Islam (*Ketuhanan dengan kewajiban menjalankan syariat Islam bagi pemeluknya*).” These seven words (in italic and bold) were commonly called Djakarta Charter. Djakarta Charter essentially expanded the application of Islam in the country.

In addition to the inclusion of Djakarta Charter in the preamble of the Constitution, there was also a proposal to insert Article 4 which requires President and Vice President are Muslims. Further, Article 29 which guarantee the right of every citizen to practice their religion should include the word Islam. This triggers significant reaction from other members of the BPUPK. The seven words in the Constitution basically only applicable for Muslims. However, Christian leaders from Eastern part of Indonesia object with such declaration. This is because it stated in the state ideology and constitution. State ideology and constitution should treat all citizens equal. It is not necessary to identify that Indonesia consist of those who are Muslims and non-Muslims.⁵⁸

To bridge such differences, Hatta, who is member of BPUPK and also Muslim, suggested that the unity of Indonesia should separate state from religion.⁵⁹ He understands that there are two differing perspectives: those who suggests that Indonesia should adopt Islam and those who prefer to separate state affairs and religious affairs. Hatta advises that Indonesia is a national unity of state which separate state affairs and religious affairs. In other words, Indonesia is not an Islamic country. He explains that an Islamic country is different from a state based on the supreme/ultimate purpose of Islam. Islamic law does not separate state and religion. State and religion are one. Islam is social, political and religious system based on Holly Qur’an as the ultimate source of every Muslim. He used Turkey experience to explain how Turkey shift from Islamic country to a country which separate state affairs and religious affairs. Even in countries where Islam was the official religion in the country, they face difficulty as there are various version of Islamic teachings. Beside Hatta, Kasman Singodimedjo who is also the BPUPK member persuaded Ki Bagoes Hadikoesoemo that unity

⁵⁷ Salim, *Challenging the Secular State*..... p. 64.

⁵⁸ Nibras Nada Nailufar, ‘Piagam Jakarta: Isi Dan Kontroversinya’ (Jakarta: Kompas.com, 2 July 2020), <https://www.kompas.com/skola/read/2020/02/07/100000769/piagam-jakarta-isi-dan-kontroversinya?page=all>.

⁵⁹ Kusuma, *Lahirnya Undang-Undang Dasar 1945*, p. 128.

is more important compared to the adoption of Islam in the Constitution if doing so will divide Indonesia.⁶⁰

One day before Indonesia declares its independence on August 18, 1945, “Mohammad Hatta, the leader of the Islamic faction in the drafting committee and the country’s future vice president, recounts how a Japanese naval officer had paid him a visit on Independence Day and persuaded him to propose the omission of the seven words, warning that non-Muslim – majority regions would not submit themselves to the new constitution and central government if Islam was implemented.”⁶¹ Hatta decided to omit these seven words considering the significant consequences if these seven words still included in the Constitution. Ki Bagus Hadikoesoemo with other Islam representatives finally agree to delete the seven words.⁶² Finally, when the Constitution was officially enacted on August 18 1945, the phrase “with the obligation for Muslims to follow Islamic law” were deleted.

Did the Constitutional Framers Apply Constitutional Deferral When Drafting Provisions on Religion State Relation?

I argue the drafters of the constitution adopt constitutional deferral when they wrote articles on religion and state relation. Constitutional deferral is an approach utilized constitutional drafters in drafting a constitution. They are “deciding not to decide” particular matters in the provisions of the constitution.⁶³ This is partly because doing so will help them to reach consensus. Constitutional deferral is often used in plural society. A country with huge diversity is likely to have different or even contradictory opinions regarding whether specific matters should be mentioned in the constitution. Even if, it should be mentioned in the constitution, how far should it be written? Should the provision go to the detail? Or should it mention somewhat general and abstract provisions? In a diverse society, it is likely that the constitution will be written in general and abstract way. This is because it helps the drafters to reach agreement. Things will be different if the provisions of the constitution are intended to be written in a great detail. It

⁶⁰ Bagus Prihantoro Nugroho, ‘Kasman Singodimedjo Dan Penghapusan 7 Kata Piagam Jakarta’ (Jakarta: detikNews, 11 August 2018), <https://news.detik.com/berita/d-4293369/kasman-singodimedjo-dan-penghapusan-7-kata-piagam-jakarta>.

⁶¹ Künkler, Mirjam, *Constitutionalism, Islamic Law, and Religious Freedom in Post-Independence Indonesi*, Chapter 8 in Asli Bali and Hanna Lerner (eds.): *Constitution Writing, Religion and Democracy* (UK: Cambridge University Press, 2017), <https://ssrn.com/abstract=3258416>. p. 190.

⁶² Ahmad Jilul Qurani Farid, ‘Haedar Nashir Singgung Penghapusan 7 Kata Di Piagam Jakarta’ (Jakarta: Gatra.com, 16 August 2019), <https://www.gatra.com/news-438079-politik-haedar-nashir-singgung-penghapusan-7-kata-di-piagam-jakarta.html>.

⁶³ Dixon, Rosalind, and Tom Ginsburg. "Deciding not to decide: deferral in constitutional design." *International Journal of Constitutional Law* 9, No. 3-4 (2011), p. 636-672.

would be difficult to reach consensus if a constitution should include the detail. This is because the interests of parties involved in drafting the constitution are many. They may be different or even contradictory. If their aspirations are significantly different, it is almost impossible to reach decision. One way to avoid this” deadlock” is by drafting things in a way that all the parties agree. And that would be drafting provision in general and abstract way.

The constitutional deferral method can appropriately explain the way the framers of the first constitution drafting articles on state and religion relation. When formulating provisions on religion and state relation there are a least two differing views. Those who support the adoption of Islam in the constitution and those who oppose such idea. Both parties are difficult to reach decision if they stick to their own view. Even though in the beginning of constitutional drafting, both camps seem agreed concerning the adoption of *Piagam Djakarta* in the Preamble of the constitution, such early agreement was not the final words. When there was a possibility that drafting in detail such as inserting Islam in the constitution will lead to disintegration, the drafters of the first constitution have to reformulate the draft so that the constitutional provision was accepted by all parties. To bridge such differences, the constitutional drafters employ constitutional deferral by omitting some phrases of the constitutional text in order to prevent the tendency of preferring one particular religion over the other. In doing so, the framers of the constitution stipulate a more general and abstract articles/provisions of the constitution. If the early draft of the preamble of the constitution mentioned “Belief in God with the obligation to implement the Sharia for adherents of Islam (Ketuhanan *dengan kewajiban menjalankan syariat Islam bagi pemeluknya*),” the final draft did not contain these seven words anymore. The final version become, “Belief in One and Only God.” The constitutional provision which stipulate that a candidate of president shall be Muslim was also deleted. This method enhances the drafters in reaching the consensus because such updated provisions treated all parties equal. It did not prefer a particular religion over other religion. The final version of the Indonesian constitution does not include the word “Islam,” “Muslims” or “Syariah” both in the preamble and the body of the constitution.

The Unintended Consequences of the Abolishment of the *Piagam Djakarta*

The fact that the *Piagam Djakarta* was finally dropped from the first Constitution was intended to maintain the unity of Indonesia. However, the decisions to drop the *Piagam Djakarta* from the Constitution did not based on the majority decision of the constitutional drafters. Out of nine individuals⁶⁴ who

⁶⁴ The nine individuals are (1) Soekarno, (2). Mohammad Hatta, (3). AA. Maramis, (4). Abikusno Tjokrosujoso, (5). Abdulkahar Muzakkir, (6). H. Agus Salim, (7). Mr. Achmad Subardjo, (8). Wahid Hasjim, and (9). Muhammad Yamin.

signed the *Piagam Djakarta* only three individuals (Soekarno, Hatta and Soebardjo) who were involved in deleting such Phrase.⁶⁵ These three individuals represented nationalists. They decided to exclude the *Piagam Djakarta* from the constitution after knowing that the eastern part of Indonesia will not join if the *Piagam Djakarta* remained in the Constitution. Some of the constitutional drafters did not satisfy with such decision because it was not based on majority.⁶⁶ They felt that they were betrayed⁶⁷ because it was inconsistent with the commitment they have achieved after long debates and discussions. For Prawoto Mangkusasmito, it reflected hasty decision for such an important yet controversial topic.⁶⁸ For Mangkusasmito such deletion raises historical question.⁶⁹

Bachtiar Effendi provides different explanation. The decision to delete the *Piagam Djakarta* was not only agreed by the nationalists but it is also agreed by four individuals representing Islam i.e. Ki Bagus Hadikusumo, Wahid Hasjim, Kasman Singodimedjo and Teuku Muhammad Hasan. There are two arguments why the Islamists finally accept the deletion of the *Piagam Djakarta*. First, the inclusion of “One and Only God” to replace “with the obligation to carry out *syari’at* Islam for its adherents” can be seen as the adoption of Islamic monotheism (*tauhid*). Second, as majority, the Islamists were optimistic that they could implement Islamic state constitutionally through general election that would be held soon after the independence. As above mentioned, not all Islamic leaders accept this situation. Some of them viewed such situation as “a betrayal toward Muslims”.⁷⁰

While the First, the Second and the Third Constitutions did not mention the *Piagam Djakarta*, The *Piagam Djakarta* was included in the text of the Presidential Decree July 5, 1959 when President Soekarno reinstated the 1945 Constitution. In this Decree, the *Djakarta Charter* was expressly mentioned as an inseparable document from the constitution. “We believe that the *Piagam Djakarta* dated 22 June 1945 is the soul of the 1945 Constitution and is a unified document with the Constitution.”⁷¹ Similarly, Anshari finds that *Jakarta Charter* and the 1945 Constitution are closely related to the issuance of the 1959 Presidential decree.⁷² Scholars provide two different explanations. The first views the *Djakarta Charter* is not legally binding because it was mentioned in the

⁶⁵ Mujar Ibnu Syarif, ‘Spirit Piagam Jakarta Dalam Undang-Undang Dasar 1945’, *Jurnal Cita Hukum* 4, no. 1 (2016), p. 24.

⁶⁶ Syarif, *Spirit Piagam Jakarta...*, p. 24.

⁶⁷ Syarif, *Spirit Piagam Jakarta...*, p. 24.

⁶⁸ Syarif, *Spirit Piagam Jakarta...*, p. 24-25.

⁶⁹ Syarif, *Spirit Piagam Jakarta...*, p. 24-25.

⁷⁰ Syarif, *Spirit Piagam Jakarta...*, p. 24-25.

⁷¹ Syarif, *Spirit Piagam Jakarta...*, p. 27.

⁷² Endang Saifuddin Anshari, *Piagam Jakarta 22 Juni 1945...*, p. 131-132.

Consideration not in the Dictum of the Decree.⁷³ It is merely a personal statement from Soekarno --the sitting President. Others see the Djakarta Charter is an inseparable document to the Constitution. The argument is based on the speech of President Soekarno as mentioned above. The 1959 Presidential Decree was a Decree issued by a President not by Soekarno as an Indonesian citizen. There were some attempts to include the *Piagam Djakarta* later on when the existing constitution was about to be amended. Such effort however never successful. As for today, Negara Pancasila is common ideology in Indonesia. Muhammadiyah for instance promote the notion of Negara Pancasila as the state of consensus and witness.⁷⁴ This idea provides a bridge between the state ideology of Pancasila and the doctrine of war in international law. The Banned of *Hizbut Tahrir* (HTI) and Islamic Defender Front (*Front Pembela Islam/FPI*) by Joko Widodo Administration in 2017 and 2020 illustrates the rejection to Pancasila specifically its first precept which stipulates that Indonesia is inclusive to several socio-religious identities including Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism. HTI does not accept such features because HTI version of Islamism does not recognize the modern nation-state. More or less FPI has been banned for the very same reason.⁷⁵ The above-mentioned narrative shows how constitutional deferral concept can explain the formulation of religion-state relation in the constitution.

Conclusion

This article has explained the reason why the Indonesian constitution did not put any reference to Islam or declare Indonesia as an Islamic state. The fact that Muslims are majority in Indonesia does not mean that the constitution declare Indonesia as an Islamic state or stipulate Islam as a state official religion. The fact is during the drafting process, some constitutional drafters suggested to expressly mentioned Islam in the Constitution. However, this idea was not easily implemented. This is because Indonesians are not only Muslims. There are other religions/faiths such as Christianity, Catholicism, Buddhism and Hinduism which also live and exist and embraced by Indonesians. Therefore, inserting the word "Islam" in the Constitution will likely raise question from those who are not Muslims. The suggestion to include *Piagam Djakarta* in the Constitution was agreeable in the beginning. However, along the way there were some objections

⁷³ Miftahuddin Miftahuddin and Dudung Abdurahman, 'Pragmatism-Accommodative Political Patterns of Al-Irsyad During the Reign of President Soekarno, 1945-1965', *Journal of Indonesian Islam* 17, no. 1 (2023), p. 189.

⁷⁴ Hasnan Bachtiar and Zakiyuddin Baidhawiy, 'Theologising Democracy in the Context of Muhammadiyah's Ijtihād', *Indonesian Journal of Islam and Muslim Societies* 12, no. 1 (2022), p. 165

⁷⁵ Saiful Mujani, et.al., 'Islamism and Muslim Support for Islamist Movement Organizations: Evidence from Indonesia', *Studia Islamika* 30, no. 1 (2023), p. 43.

from eastern part of Indonesia delegates. The adoption of *Piagam Djakarta* potentially leads to the possibility that eastern part of Indonesia will not join Indonesia if the Constitution mentioned these seven words. To avoid disintegration, these seven words was deleted in the final version of the Constitution. The deletion of *Piagam Djakarta* and any other reference to a particular religion from the texts of the Constitution will maintain the unity of Indonesia. In the end of the day, the framers of the first Constitution declared that the final version of the Constitution remains short and broad. The religion-state provision of the constitution remains abstract and general without any reference to Islam. Method of stipulating abstract and general provisions reflects the adoption of constitutional deferral which essentially means that the framers of the constitution *deciding not to decide*. Constitutional deferral concept helps to explain the reasons behind the deletion of *Piagam Djakarta* during the constitutional drafting of the first Constitution. In this particular case, constitutional deferral helps the constitutional framers to make things done and at the same time keep Indonesia unified. Without employing such approach, it is likely that the drafting process will go longer, may be challenged by other constitutional drafters. In worse scenario, it may lead to deadlock which mean the constitution will never exist. Further, it may cause disintegration especially the eastern part of Indonesia.

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