

## ISLAMIC LEGAL PROBLEMATICS IN LEGAL POLITICS (Examination of the Roots of Islamic Law Controversy in Indonesia)

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### Abstract

*The research results show that the roots of Islamic law controversy in legal politics in Indonesia stem from several problems such as; differences in perceiving Islam, differences in legal basis/sources, theoretical understanding of Islamic law, controversy between religious figures and nationalists, controversy between Muslims and non-Muslims. Controversy seems to continue to accompany the government's efforts to implement Islamic law (Shariah) as a policy framework, especially in regulations or laws. The ratification of a regulation into a form of law is closely related to the legal political policies maintained by society and the government in a country. Thus, the idea emerged that law emerged from the political process or, conversely, politics emerged from the legal process. These two different views greatly influence the highest decision-making power in a state or country. Based on the research results, it shows that the problems of Islamic law in Indonesia consist of three areas: First, they are distributed in the Fiqh books written by the Fuqaha; Second, it is included in State regulations containing Islamic law; Third, it is included in the judge's decision in the form of jurisprudence. The application of these three sources of Islamic law often creates controversy between fiqh and existing regulations, between fiqh and court decisions, and between court decisions and existing regulations.*

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**Keywords:** Problems of Islamic law, Legal Politics, Legal Controversy in Indonesia

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### INTRODUCTION

Religion and politics are not a phenomenon that only occurs in the Islamic world. An expert cannot possibly ignore the role of Islam in the public life of Muslims. The enormous influence in the politics of Muslim nations can be clearly traced to the tendency for very wide political participation among their populations. Leaman writes: One comment often made by writers on Islamic political philosophy is that conservatives are unwavering. Even so-called modernists still have a tendency towards a kind of theocracy, a state in which religion plays a major role.

Every legal system requires a government that adopts it and a set of state apparatuses that will implement and enforce its sanctions. Therefore, the law also requires a state to enforce its sanctions. However, the key lies in the answer to whether all the theories formed in the history of Islamic political thought actually require the establishment of an Islamic state?

The two factors mentioned, that Islam is something vital in the aspect of Muslim culture, and that Shari'a requires political power and authority in order to be implemented, will lead to the conclusion that all political systems in the Islamic world have historically been religious governments. In fact, in many ways, history

influences the theological discourse that develops and is understood by Muslims. This condition, to a certain extent, leads political problems to escalate into theological problems. Even though according to Akh. Muzakki, theological issues or discourse should grow first as a tool to strengthen the concepts of Islam as a religion rather than political discourse.

Abdul Halim believes that Islamic law and politics are two sides that cannot be separated in an Islamic society. Islamic law without political support is difficult to explore (ijtihad istinbat) and apply (ijtihad). Politics that ignore Islamic law will result in chaos in society. The better the relationship between Islam and politics, the greater the opportunity for Islamic law to be actualized, and the more tenuous the relationship between Islam and politics, the more there is little chance of Islamic law being implemented.

When Muslims were politically strong, with the city state of Medina, Islamic law and politics were an inseparable unit, even without explicitly mentioning Islamic law as the state guideline. The State of Medina with the Medina charter (Ṣaḥīfah), is not even called an Islamic state. However, the country's constitution is able to accommodate all the interests of a pluralistic society.

On the one hand, Islamic groups want the legal rules that apply in Indonesia to have sharia nuances, at least for Muslims, because societal problems have tended to be caused by weakening religious commitment and non-enforcement of sharia. On the other hand, secular and non-Muslim groups do not want religious intervention into the state. This controversy continues to arise in the era of regional autonomy, with the emergence of the desire to implement sharia enforcement in several Islamic-based areas in the reform era.

The controversial roots above originate from several problems, including differences in views regarding Islam, problems with legal sources, theoretical studies of Islamic law, controversies between religious and nationalist groups, controversies between Muslims and non-Muslims. This controversy will likely continue if political compromises are not made or a return to democratic principles that prioritize universal values. Apart from that, the root of the problem which is the cause of this controversy can also be eliminated.

Islamic law in Indonesian politics has experienced quite a long and winding journey. In fact, it can be said that during the Old Order, the position of Islamic law was no better than during the colonial era. Soekarno's view of Islam seemed very secularistic. Even though at the beginning of the formation of the Indonesian state, in the BPUPKI sessions Soekarno was able to accept and agree with the existence of the Jakarta Charter (Belief in God with the Obligation to Implement Islamic Sharia for its Followers). However, after Soekarno came to power, his support for Islam diminished, not to say it disappeared completely.

Controversial in responding to sharia is not an attitude that has suddenly emerged recently, but already has a background. First, differences in views in

viewing Islam have implications for the acceptance of the existence of sharia. There are those who view Islam as a system of life and there are also those who view it solely as a religion, the same as other religions, both heavenly religions and cultural religions.

Thus, Islamic law has played a very important role in the development of Indonesian national law. However, the birth of various laws and regulations that contain Islamic legal values is not free from problems. Every time Indonesia undertakes legislative efforts on Islamic law, it always raises controversy, both technical, juridical and political. This polemic arose because the position of Islamic law was at the midpoint between the religious and state paradigms and even at the midpoint of tension between the religions themselves. This article will try to look at the controversy surrounding the politics of Islamic law in Indonesia and where the root of the problem is.

## LITERATURE REVIEW

Said sources for Islamic law as a translation of lafaz مصادر الاحكام (masādir al-ahkām). As an Arabic word مصدر / masādir is only used by some contemporary writers in Islamic law instead of a title الادلة الشرعية (al-adillah al-syar'iyah) while some still use lafaz الادلة الشرعية (al-adillah al-syar'iyah) or with the translation of the Islamic propositions.

In classical fiqh and ushul fiqh books only the word (al-adillah al-syar'iyah) is used, there is no term مصادر الاحكام (masādir al-ahkām). Those who use the word masādir as al-adillah certainly assume that the two words have the same meaning.

"If you pay attention to the etymological meaning of the two words, it will be seen that the two words are not synonymous, at least when connected to the word sharia/الشرعية or syar'iyah(. Word source/ مصدر (masdar) or the plural masādir can be interpreted as "a container in which legal norms are discovered and adopted". While the word argument/الدليل (al-dalil) or with the plural al-adillah, is a guide that leads to finding certain laws.

The command to obey Allah and His Messenger means the command to follow the Koran and Sunnah. Meanwhile, the order to obey ulil amri, according to Abdul Wahab Khallaf, means the order to follow al-ijmā', namely the legal provisions that have been agreed upon by the mujtahidin, in terms of the formation of Islamic law (al-ijmā'). Ulil amri can also be interpreted as a government/leader who takes care of the interests of Muslims in a broad sense.

Furthermore, the order to return all disputed matters to Allah and His Messenger, means the order to use al-qiyās, if one does not find the texts (Quran and Sunnah) or al-ijmā'. In situations like this, reason must play a role in understanding the spirit of the text by comparing things that already have laws.

From the hadith of Mu'az bin Jabal, it can be concluded that (a) there are three sources of Islamic law, namely (1) the Koran, (2) the sunnah, and (3) the

human mind which fulfills the requirements for ijtihad. This rationale, in Islamic legal literature, is also called ar-ra'yu or people's opinions or opinions of people who meet the requirements to determine values and norms (rules) measuring human behavior in all areas of life and life. The three sources of Islamic law form a unified series, in order of priority.

However, if you look closely, Hasbi Ash-Shiddieqy's division of the sources of Islamic law is actually not quite right. If this division is placed within the framework of revelation and reason, there are actually only two types of sources of Islamic law, namely sources of sharia and sources of ghuru sharia or fiqh. The sources of sharia consist of the Koran and hadith, while the sources of fiqh consist of al-Ijmā', Qiyās, Qaul al-Sahābi, al-Istihsān, Maslahah al-Murlah, Istisāb, and Sadd al-Ẓarī'ah and 'Urf. The first source is called a source based on revelation, while the second source is called a source based on reason (al-ra'yu). Because what Hasbi Ash-Shiddieqy considers to be a source that is neither revealed nor based on reason, is actually a source that is based on reason. 'Urf for example, before it became 'Urf was the result of human thought, in the sense of something that went through the thought process of the figures -community figures, both religious figures, cultural figures and others, before it is practiced by the community and becomes 'Urf. Likewise with al-Ijmā' and Qaul al-Sahābi. So, there is no source of Islamic law that is not based on revelation and not based on reason.

In Indonesia, the two sources of Islamic law mentioned above are written in Islamic legal literature. If examined carefully, the two systematic sources of Islamic law are, in fact, essentially the same. Both those who mention three based on the Koran, Surah 4: 59 and the hadith of Mu'az bin Jabal, and those who break it down into four based on the same verse of the Koran and Shafi'i's formulation, are both of the opinion that the main and most important sources are the Koran and Sunnah. Additional sources or other sources of development of Islamic law are essentially the same, because what Shafi'i calls al-Ijmā' and al-Qiyās are actually paths or methods or methods used by the human mind, both individually. making analogies (qiyās) or jointly reaching a consensus (ijmā') in an effort to find or determine legal rules to be applied to a particular case.

## METHOD

This type of research is literature research which is descriptive qualitative in nature, namely discussing state legal political debates in addressing the existence (existence) of Islamic law (syariah) as a spiritual need for Indonesian society, the majority of whom are Muslim. Knowing the pros and cons between the state and Muslims, between internal Muslims who have different thinking paradigms, and the triangular debate, namely the state, how does the state deal with controversy or conflict, conservative or responsive? Why and how does change and continuity

occur in the country's political attitude in viewing Islam (law) and whether there is also a shift in the political paradigm among Muslims.

Based on the problems stated previously, the author takes several approaches, including: Historical approach, namely exploring the dynamics of Islamic law in legal politics in Indonesia which is more directed at the objective conditions of Islamic law in legal politics in Indonesia, controversies (debates), and legal products who was ever born. From this it will be seen that there is interaction with various parties: Muslims, the state, non-Muslims. Of course, this meaning can be traced in relation to the decision formulation process and the contributions of the parties as well as cross-talk and debate.

## **DISCUSSION**

### **Islamic Problems in Legal Politics**

One dimension of the history of Islamic political thought that has given rise to prolonged controversy and polemics is the issue of the relationship between Islam and the state (politics). This controversy mainly develops around the issue of idealized political systems or structures. That Islam is a religion that does not separate between particular religious affairs and universal state (political) affairs, is an axiom that has been accepted by almost all Muslims. The problem arises when it turns out that there is no agreement regarding whether or not there is an Islamic political system or state in which a complete practical superstructure and formal infrastructure is available.

The relationship between Islam and politics is always interesting to study. This can be said to be interesting for two reasons: First, since its birth, Islam has had two aspects that have always been intertwined, namely religion and society. Islam regulates these two aspects, namely the relationship with God and the relationship with humans. If we look at religion from an intrinsic and simple point of view, then religion, according to Edward B. Tylor's definition, is "belief in the existence of a spiritual entity". Understanding religion in a variety of more complex definitions, religion is "a system of symbols that works to establish a strong, deep and long-lasting mental and motivational atmosphere in humans by formulating conceptions of the general order of existence and enveloping these conceptions with an aura factuality so that the mood and motivation seem to be uniquely real," as formulated by Clifford Geertz. Second, attempts to organize society based on the Islamic religion, in various places and times, have occurred frequently and experienced ups and downs.

However, in Islam the views on the relationship between religion and the state are very varied, especially regarding the views of the Islamic state of Medina which was formed by the Prophet. According to Azyumardi Azra, the relationship

between religion and the state has been going on since almost a century ago until today, and has not yet been completely resolved.

In studying the relationship between religion and state in Islamic thought, it cannot be separated from the views of Muslim scholars and scholars as a reference and comparison. In reality, if one looks at the world or Islamic countries today, there are three directions or models in the relationship between religion and state, namely: Islam, secular, and Muslim. With these three views, it will be easier to classify the views of Muslim figures and scholars in viewing the relationship between religion and the state from an Islamic perspective.

Second, the nature of the relationship between Islam and the state is different from that in modern-day Christianity. The authority of the successors of the Prophet Muhammad saw. (in politics) is not absolute. In addition, the developing political system - as studied by Robert N. Bellah - has an open, egalitarian and participatory nature. On the other hand, in Christianity, the character of the authority of religious figures as such does not exist. The political system that developed in the Christian tradition is also not egalitarian, open and non-participatory. For example, with the implementation of the idea of the Holy Roman Empire in the Middle Ages. If in the future with the emergence of secularism, Jews support secularism, this is motivated by the Jewish desire to be free from religious persecution by Christian rulers, as they have experienced throughout their history in the West until now (remember the issue of "anti-Semitism").

With the arguments above, Nurcholish Madjid wants to prove that the quality of relations between religion and the state in Islam is loose. In other words, even though it is acknowledged that several cases of rulers such as Umar bin Khattab and Usman bin Affan are recorded as having inherited products (religious politics) to this day, one thing cannot be denied that the fundamental concepts regarding the nature of the relationship between Islam and the state are loosely related.

Third, another argument put forward by Nurcholish Madjid is the aspect of axiology or religious doctrine. In Christianity, according to experts, it finds itself in the most difficult position compared to other Semitic religions. This was due to the existence of church dogmas that did not make sense with the rational thinking of Greek philosophy - in this case the Aristotelian one.

It can be concluded that in relation to the relationship between Islam and the state, the paradigm developed places more emphasis on aspects of substance rather than form. Islam never determines the form of state that Muslims must build. What is more important for Islam is the substance of the administration of the state. This is because empirical reality confirms that a country can be formally democratic, but its implementation has an authoritarian or even totalitarian substance. The substance of state administration that is emphasized here is the

embodiment of all the basic principles of Islam, especially the principle of justice as the most important principle in all dimensions of state life.

### **Examining the Roots of Islamic Law Controversy in Indonesia**

Indonesia is a country of law, that is, it bases all the order of national and state life on a governing law (Rule of Law), within this legal order there is a legal system. The legal system adopted in Indonesia is a Mixed Law System in which, in addition to statutory law, Islamic law also applies. The existence of Islamic law is manifested in the constitution of the State of Indonesia, commonly known as the 1945 Constitution of the Republic of Indonesia (UUD 1945), which is a basic law that regulates national and state life in order to create a just government and a prosperous people.

In relation to national and state life, the constitution regulates religious life, namely as stated in the fourth paragraph of the Preamble to the 1945 Constitution which reads, "Belief in One Almighty God." The principle of divinity instilled in the 1945 Constitution by the founding parents is an embodiment of religious confession. From an Islamic perspective, this provides recognition of the existence of Islam as an official religion and Islamic law as the law that applies in Indonesia.

Political discrimination against the law turns out to have a goal, as a means of legitimizing government power, as a means of facilitating the process of social engineering. Due to the stronger concentration of political energy, it is reasonable to believe that legal autonomy in Indonesia is often subject to political intervention, not only in the creation process, but also in its implementation.

According to Daniel S. Lev, what is most determining in the legal process is the conception and structure of political power. Namely that law is always more or less a political tool, and that the place of law in the state depends on political balance, the definition of power, the evolution of political, economic, social ideology, and so on.

Even though the legal process referred to above is not identified with the intention of forming law, in practice the process and dynamics of legal formation often experience the same thing, namely the conception and structure of political power that prevails in society which largely determines the formation of a legal product. So to understand the relationship between politics and law in any country, it is necessary to study the cultural background, economy, political forces in society, the state of state institutions, and social structure, in addition to the legal institutions themselves.

By using the basic assumption that law is a product of politics, politics will greatly determine law so that this study positions politics as an independent variable and law (Islamic law) as an affected variable. Legal politics also includes an understanding of how politics influences the law by looking at the configuration

of forces behind the making and enforcement of laws. Also consider legal ethics, whether they are good or bad, fair or not, or whether the legal provisions are suitable for the society concerned, because this has something to do with whether or not the law is obeyed in a society.

Islamic law since its arrival on the Indonesian archipelago until today is classified as living law in society. Not only is Islamic law a religious entity adhered to by the majority of the population to this day, but in its practical dimension in some areas it has become part of the traditions (customs) of society, which are sometimes considered sacred. Sociologically and culturally, Islamic law is a law that flows and is deeply rooted in the culture of society. This is due to the flexibility and elasticity of Islamic law.

## CONCLUSION

The Koran is the first and main source of Islamic law. It contains fundamental legal rules (principles) that need to be studied carefully and developed further. According to Muslim beliefs, apart from the Koran and hadith, ijtihad is also a source of Islamic law. The scientific sources of Islamic law are very universal and dynamic in the context of the study of ijtihad as a basis for philosophical thought, which has encouraged very critical and academic Islamic studies.

The implementation of Islamic law in Indonesia has received a constitutional place based on philosophical reasons, Islamic teachings are the way of life, moral ideals and legal ideals of the majority of Muslims in Indonesia, and have an important role in creating the fundamental state norm Pancasila. However, in terms of implementing Islamic law in Indonesia, it also faces challenges in terms of the culture of Indonesian society itself. Historical facts show that the different culture of Indonesian society is caused by the existence of several legal systems that apply in Indonesia.

Referring to the application of Islamic law above, it can be understood that the biggest challenge in the application of Islamic law, especially in the form of formalization or legislation of Islamic law in Indonesia, is the lack of common ground or integration of the concept of proper application of Islamic law in Indonesia. If this Islamic law legislation effort is to be implemented, then the approaches need to be filtered and integrated with the Indonesian national legal system so that the strategy for fighting for Islamic law legislation can be successful. Because legislation is a political product, Islamic law must receive the support of a majority vote from law-forming institutions, especially as the fact is that the political aspirations of Islam in the DPR are not those of the majority group, so that legislative efforts will face strong challenges. Even though the current membership composition of the DPR is predominantly Muslim, they are reluctant to fight for Islamic law legislation due to their low understanding of Islamic law.

For this reason, the formalization of Islamic law group is of the view that a structural approach will have more binding force, legal legitimacy and power for the implementation of Islamic law which is considered more effective in efforts to improve the system of life which currently tends to be destructive. Apart from that, Islamic law also has a close relationship with society which is based on the assumption that Islamic law has characteristics such as takamul, tasamuh and haraqah which are able to maintain its existence in society.

## REFERENCES

- A. Djazuli. Several Aspects of the Development of Islamic Law, in Juhaya S. Praja, Islamic Law in Indonesia: Thought and Practice. Bandung: Rosdakarya Youth, 1994.
- Abdillah, Masykuri. Democracy at the Crossroads of Meaning: Indonesian Muslim Intellectual Responses to the Concept of Democracy (1966-1993). Cet. I; Yogyakarta: Tiara Wacana Yogya, 1990.
- Abdullah, Abdul Ghani. Religious Courts Post Law No.7/1989 and the Development of Islamic Law Studies in Indonesia in. "Legal Pulpit" No. 1 year V., Jakarta: al-Hikmah and Ditbinpera Islam Depag RI.
- Afandi, Emilianus. Suing the State: Democratic Rationality, Human Rights and Freedom. Cet. I; Jakarta: Indonesian Legal Aid and Human Rights Association (PBHI), 2005.
- Ahmad, Amrullah (et. al.). Dimensions of Islamic Law in the National Legal System; Remembering 65 Years of Prof. Dr. H. Busthanul Arifin, SH. Cet. 1 ; Jakarta : Gema Insani Press, 1996.
- Ahmad, Arifuddin. New Paradigm Understanding Prophetic Hadith Reflections on Updated Thoughts of Prof. Dr. Muhammad Syuhudi Ismail. Cet. I; Jakarta: Renaissance, 2005.
- al-Azami, Muhammad. On Schacht's Origins of Muhammadan Jurisprudence. New York; Wiley, 1985.
- Ali, A. Mukti. The Nature of Modern Islamic Thought in India and Pakistan. Cet. III; Bandung: Mizan, 1998.
- Ali, Mohammad Daud. Principles of Inheritance Law in the Compilation of Islamic Law, in the Ditbinpera Team, Various Views on the Compilation of Islamic Law. Jakarta: Al-Hikmah, 1994.
- '. 'Islamic Law: Religious Justice and its Problems', in Juhaya S. Praja, Islamic Law in Indonesia: Thought and Practice. Cet. II; Bandung: Rosdakarya Youth, 1994.

------. Islamic Law and Religious Courts. Cet. II; Jakarta: PT RajaGrafindo Persada, 2002.

------. Islamic Law: Introduction to Islamic Law and Legal Order in Indonesia. Ed. VI., Cet. IX; Jakarta: PT RajaGrafindo, 2000.

Ali, Zainuddin. Legal Research Methods. Cet. I; Jakarta: Sinar Graphics, 2009.

Amak FZ Marriage Law Process. Bandung: Al-Ma'arif. 1976.

Ansari, Endang Saifuddin. Jakarta Charter 22 June 1945. Cet. I; Bandung: Rajawali Press, 1996.

Anshori, Abdul Ghofur. Religious Courts in Indonesia After Law no. 3 of 2006 (History, Position and Authority). Cet. I; Yogyakarta: UII Press, 2007.