
The Implementation Of Islamic System In The Context Of State Law In Indonesia

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Submitted: 03/09/22 Revised: 20/09/22 Accepted: 30/09/22

ABSTRACT

The application of Islamic Law in the constitution in Indonesia with various problems of the position and existence of Islamic law in the constitutional system in Indonesia. There are many contradictions and controversies in realizing the national legal system, because it does not rely entirely on customary law and Islamic law and western law. The form of constitution is an effort to make changes to something that already exists into something new with adjustments and changes.

Keywords: State, System, Islamic Law

INTRODUCTION

Urgency According to Fredman, the national legal system functions to maintain and disseminate values that people believe to be the truth.(1)(2)

The relationship between Islamic constitutionalism in the context of constitutionalism in Indonesia is still an interesting discussion.

The problem is, Indonesia, a country with a majority Muslim population, is unable to base its constitution on Islamic law. However, Indonesia is not a secular state either; instead, it can be described as a moderate state where Islamic law and the constitution coexist. The fundamental need for creating order and peace in Indonesia is the existence of a national legal system. While the state is the embodiment of the legal system of the nation in a juridical manner. Given the several legal systems that have been adopted in the past, questions about the national legal system are still present in the empirical area in Indonesia. One of the legal systems included in the national legal system is Islamic law. Islamic law has a place of honor among existing laws in Indonesia, including customary law and positive law, but not in an ideological, normative or dogmatic sense, especially textually, but culturally(3).

Along with the development of the times through Indonesian history it is very easy to be able to interpret the national legal system. Because the national legal system does not fully rely on Islamic law and western law and customary law, there are several controversies and contradictions in its implementation. Thus, the form of the constitution is an attempt to change something that already exists into something new through modification and adjustment. Procedures and efforts to incorporate Islamic law into the national legal system in this case are

intended to change the normative aspects of Islamic law into positive aspects in order to place Islamic law into the Indonesian legal system.

BACKGROUND

In light of the foregoing, the constitutional system, also known as the Islamic state constitutional system, is usually adopted in Middle Eastern countries by incorporating Islamic law into their legal system. Various initiatives(4).

Scholars to find a framework for interaction between religion and the state mostly have two goals. First, discovering the Islamic ideal for the state requires answering the question, "What is the form of the state in Islam?" with an emphasis on formal and theoretical aspects. This strategy is based on the idea that Islam contains a certain concept of the state. Second, to answer the question, "What is the content of the state according to Islam?", it is necessary to idealize the process of administering the state from an Islamic point of view (with an emphasis on substantial and practical aspects).

The definition of the word relation includes "relationship" "relationship", and "relationship";. Meanwhile, "religion" implies that it is a system of rules that regulate human life so that chaos does not occur. In contrast, in terms of terminology, the state is the highest organization among a group of people who aspire to become one, reside in a certain territory, and establish a sovereign government.

The following notion includes the constitutive value of a nation, which requires certain components, including the existence of a region (territory), society (people), and sovereign government. Efforts to search for the term "state" in Islamic literature seem to have started from this definition. Because of the term

Imamat, Dawlah, Hukumah, Khilafah and Sultanate all mean the state in Islamic studies.

Based on the explanation above, the formulation of the problem is:

1. What are the characteristics of state thought in Islam?
2. What is the ideal form of the relationship between religion and the state in the Indonesian constitution?

METHODS

By using the normative juridical approach that the author adheres to in research techniques, researchers are trying to find the truth by examining the principles contained in Islamic state administration in laws and regulations that have something to do with Islamic state constitutional law.

RESULTS

What Are The Characteristics Of State Thought In Islam?

The concept of the khilafah underwent a number of changes in Islamic history after the death of the Prophet Muhammad. The election of Caliph Abu Bakar Al-Siddiq is a symbol of government formed through consensus (al-shura) and deliberation, which is one of the forerunners of democracy.

Because it was carried out by coronation and appointment, the election of Caliph Umar bin Khathab, the second caliph, was a symbol of the absolute monarchy system. When the third caliph was about to be appointed, the term *ahl al-halli wa al-'aqdi* began to appear, which was appointed by Umar bin Khathab's best friend. to prepare for the succession of leadership. Imam al-Suyuthy in *Tarikhu al-Khulafa* and Syekh Ramadhan al-Buthy in *Fiqh al-Srah al-Nabawiyyah ma'a Mûjiz li Târîkh al-Khilafah al-Râsyidah* often mentions the term *Ahl al-Halli wa al-'Aqd* like *Ahl al - Shura*.

The following statement is based on the fact that the six friends who are members of the AHWA assembly are ambassadors for political involvement. The decision to reach a compromise was made to avoid human friction. This political agreement eventually led to the election of Sayyidina Uthman bin Affan *radliyallahu 'anhu* who is also called *Dzu al-Nurain*, as the caliph of the Islamic state, with the title *Amir al-Mukminin*, which was initially held by Sayyidina Umar bin Khathab and continued during his reign.

The restoration of the caliphate system can be concluded indirectly if it is investigated longer than the election of Sayyidina Uthman bin Affan. What started as *Shura* developed into monarchy, then representative government (*Ahlul Halli wal Aqdi*). After Sayyidina Ali bin Abi Talib was appointed Caliph, the political structure changed again until it began to resemble a theocracy. Even then, with the first appearance of Muawiyah bin Abi Sufyan as the Caliph of the Umayyad dynasty following the *Daumatu al-Jandal* agreement, which ended with the killing of Caliph Ali bin Abi Talib, the Islamic government system changed drastically to become an absolute monarchy known as *mamlakah*.

According to historical records, the hereditary absolute monarchy system lasted until the 19th century. The fall of the Ottoman Empire marked the end of absolute monarchy. The constitutional system has since undergone a dramatic transformation into the state framework that has survived to this day. Practically, and especially in the Islamic world, there is no one system of state administration in this world that is considered standard, regardless of the ups and downs of the history of this caliphate. The only reason the friends provide assistance in creating a government is because they realize the potential for benefit to society. Moreover, from the generation of companions to the nineteenth century, when the emergence of the nation-state discourse first emerged.

Mu'amalah includes administration within the state. Therefore, *ijtihad* is valid against him. The constitutional system is not included in the scope of the pillars of religion which are *qath'iy* and absolute because it is included in the components of the *mu'amalah* system. This led to the creation of relativity which was accepted by the scholars as a way of responding to the reality that occurred.

Because there is no system standard constitutional system in the history of text transmission, the formation of a state system in any form is basically free. Giving halal legality to things that are prohibited by their legal status or even justifying things that are prohibited is not allowed in the system established by the state. The emergence of the nation-state has created a number of new challenges for Islamic philosophers. With the help of this process, modern jurists have updated several religious texts, giving rise to new interpretations of Islamic discourse in the context of the nation state. The jurists studied the concept of *maqashid al-shari'ah* that emerged in the Islamic world in order to create a new formulation. According to the following concept, it is agreed that the main purpose of Islamic law is to carry out five protections, including *hifdh al-nasl* (protection of offspring), *hifdh al-dn* (protection of religion), *hifdh al-mâl* (protection of property), *hifdh al-'aql* (guarding honor) and *hifdh al-nafs* (protection of the soul). Later, Ibn 'Assyria added to these five protections the *hifdh al-'irdhi* (guard of honor). Therefore, 5

protections become 6 protection items. The presence of the state has a mandate in the form of upholding the universal values of maqashid al-sharia. Therefore, the form of the state found is essentially not a goal (ghayah). It's just a wasilah (tool).

Al-Qur'an and al-Hadith are not mutually exclusive openly (dhahir nash) or in depth (tafshili) discussing the meaning or structure of the state or state administration system. On the other hand, the texts of revelation actually only discuss politics and universal and global governance systems (ijmaly). The concept of al-huriyah (freedom), al-syura (deliberation), al-musawah (equality) and al-'is (justice), expresses the mirror of this universality.

From the explanation of the concept of Islamic State and government, Islamic thinkers created various concepts, both contemporary and classical Islamic figures. One of the thinkers who revised the concept of the state was Al Maududi.

According to Mawdudi, there are three basic beliefs about the State according to Islam(5), which include:(6)

First, Muslims do not need or are even prohibited from using the Western political system; Instead, they must return to the Islamic system by using the ar-Rasydin Khulafa as a model or illustration of the Islamic state system. Islam is a complete religion that contains all forms and instructions needed to make rules for human life, including political life.

Second, humans serve exclusively as earth's agents for direction(6) Kamaruzzam. Relations between Islam and the state: Modernist and Fundamentalist Perspectives.

God if He is the only one with absolute authority or sovereignty. The laws outlined in the Qur'an, the Sunnah of the Prophet, or both must be followed by the state and the people.

Third, the Islamic political system is a global system that ignores linguistic and national barriers and geographical relationships. Instead of democracy, Maududi presented the concept of an Islamic state, namely the concept of democracy.

Al-Maududi is of the view that only Allah SWT has the highest level of sovereignty, but humans are only allowed to play a role within the parameters set by Allah's law. These laws eventually become a person's guidelines and must be followed in everyday life. In contrast to democracy, which asserts that the people have unquestioned power, in democracy, the only true possessor of ultimate authority is God. Theodemocracy theory is a combination of two concepts, namely democracy and theocracy.

God's law is truer through the books that have been revealed to his apostles and humans have no right to make laws. Man-made laws in the future must not conflict with God's basic revelations.

Democracy is an Islamic political system that was first put forward by Abul a'la Al-Maududi. Al Maududi acknowledged this, he said:

“If I am allowed to propose a new term, I will use the name of the following system of government as system 'theo-democracy' or divine democratic government, because with this system of government Muslims have limited popular sovereignty under the absolute sovereignty of Allah. The executive branch under this system of government is subject to the will of Muslims in general, who also have the right to overturn it. All the affairs of government and the problems arising from them, , which by the way does not contain clear rules in the previous Shari'a by agreement between Muslims.”

Theodemocracy is basically the concept that under Islam, the people have power, but that authority is limited to laws ordained by God. Theodemocracy, in other words, the sovereignty of the people limited by God's control.

Al-Madud emphasized that the legislature and the head of state have the same authority in an Islamic state. In contrast, the second connection model views religion and the state as

complementary and essential institutions. Al-Mawardi and al-Ghazali, in their important works *Ihya* and *Ahkam Assulthaniyah*, encourage this symbiotic relationship. Because the priest is a tool used by the successor of the prophet to dominate the world (religion acts as state controller) and spread religion.

In al-Ghazali's view, "the state is necessary for the people in connection with meeting the needs of industries, professions, and heads of state who have religious legitimacy." Industries that are needed for the benefit of society are: justice and the science of law.

According to Ibn Taimiyah in *assiyasa*, religion and the state actually do not have coercive state power. Meanwhile, a state that does not have the discipline of revelation law will inevitably develop into an unjust organization.

Meanwhile, a state without the discipline of revelation law will surely become an unjust organization. The following is in line with al-Ghazali's view in *al-Igtishad fi al-I'fiqad*, there is al-Ghazali who stated that religion and state are twin brothers. Religion is the foundation and strength of the guardian state. All that wasn't baseless willpower was crushed, and anything that didn't have a guard would be wasted.

The government that Islam aspires to is a government that is democratic (holy) in the sense that it is based on God Almighty and guarantees the freedom to carry out religious teachings and express them orally or in writing (of course still within the limits of Islamic teachings).

DISCUSSION

What Is The Ideal Form Of The Relationship Between Religion And The State In The Indonesian Constitution?

In Islamic history, Dim Syamsudin divides three topologies of the relationship between religion and the state, namely:

First, there are groups who believe that the state is closely related. The state domain also includes religion, or vice versa. so that the relationship between religion and the state is no longer separate but merges into one unit.

Second, many believe that religion and state are inextricably linked through dynamic symbiotic and dialectical interactions, rather than directly, maintaining a physical barrier between the two so that they coexist. Both have the same goal; religion requires state institutions to carry out its growth, and the state requires religion so that it can create institutions that are morally just and in line with the spirit of divinity

Third, religion and the state have no relationship at all, in the following groups there is a separation between state politics and religion so that they reject religious norms in state law or the foundation of the state in religion.

The concept of religion and state in Indonesia is contained in the 1945 Constitution which includes freedom of religion which existed before Indonesia's independence. Thus, it can be said that the relationship between religion and the state in the constitutional system in Indonesia according to religion, constitution and the state operates in a dynamic-dialectical manner, so that the way of life of the nation and state and the substance of religious norms coexist.

The president functions as head of state as well as head of government under the Indonesian constitutional system. The *Khilafah*, however, in the Islamic constitutional system, carries out two functions simultaneously: firstly, as a state leader to manage the government, and secondly, as a religious leader to maintain God's order on earth and to function as a protector of *marwah*. Meanwhile, the only responsibility of the President in his dual role as head of state and head

of government is only to oversee domestic and foreign affairs. This is the risk of religious plurality in Indonesia. Although the majority of the population in Indonesia is Muslim. So the president must be able to maintain this diversity. In addition to maintaining this diversity, the president's important role is to carry out the duties and powers and mandates given by the constitution and laws.

CONCLUSION

The relationship between Islam and the state is related to one another, especially in the constitutional system. Islamic relations provide principles in the formation of a state.

The state has the same responsibility in the context of Islam and Indonesianness, namely that the state guarantees the continuity and freedom of religion and religion encourages its followers to defend their homeland and do good.

ACKNOWLEDGEMENT

One of the articles related to The Islamic constitutional system and the constitutional system in Indonesia are legal journals made by Muntoha (2001) with the title "Problematics of the Formalization of the Implementation of Islamic Sharia in the Context of State Administration in Indonesia." Islamic law is one of the legal systems that exist in the national legal system

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