



RESEARCH ARTICLE

Dynamics of Islamic Law in Indonesia During the Reformation Period

Wildan Habib Azhari^{*1}, Rasyid Siddiq², and Zainul Fuad³

¹ Universitas Islam Negeri Sumatera Utara, Fakultas Syariah dan Hukum, Sumatera Utara, Medan, Indonesia

² Universitas Al Washliyah Medan, Sumatera Utara, Medan, Indonesia

³ Universitas Islam Negeri Sumatera Utara, Pasca Sarjana, Sumatera Utara, Medan, Indonesia

*Email: whbbzhr@gmail.com¹, rasyidsiddiq@gmail.com², zainulfuad@Uinsu.ac.id³

Abstract

Since the people of the archipelago embraced Islam, Islamic law began to be applied in social life. The early era of Indonesian independence was the beginning of the enforcement and application of Islamic law in Indonesia, something that was visible in unwritten law, social practices, cultural practices, in legislation and in constitutional practice. After the change of regime, from the New Order to the Reformation era which began in 1998, it has brought major changes in various fields including the legal field. The debate between Islam and Pancasila has strengthened again. Based on the problems above, this article aims to explain three important things, including the dynamics between law and politics in Indonesia, then the development of Islamic law in Indonesia in the reform era, as well as factors that become opportunities and challenges for Islamic law amidst the plurality of national laws in the reform era. This research uses library research based on qualitative descriptive data about the history of the development of Islamic law.

Keywords

Islamic law; Reformation; Legislation

INTRODUCTION

Islam has fixed basic principles, but Islam can adapt to changing times without abandoning its basic principles. Islam always appears in a flexible form, especially when dealing with cases that develop in a society that is found with a variety of cultures, customs and traditions. The entry of Islam into the archipelago coincided with the beginning of the emergence of Islamic law in the archipelago. Since the people of the archipelago embraced Islam, Islamic law began to be applied in social life. Legal norms or rules are used as life guidelines after first experiencing acculturation. It is from this process of social interaction that Islamic law begins to take root and become a legal system in society.

The early era of Indonesian independence was the beginning of the enforcement and application of Islamic law in Indonesia, something that was visible in unwritten law, social practices, cultural practices, in legislation and in constitutional practice. The position of Islamic law in the legal system in Indonesia has experienced ups and downs. Islamic law is not the only legal system that applies, but there are other legal systems, namely customary law and Western law. These three legal systems influence each other in efforts to establish a national legal system in Indonesia. This was seen when approaching independence, the founding fathers had different opinions about the form and basis of the state as well as the laws that would apply in Indonesia through the Jakarta Charter of 22 June 1945, becoming a historical pioneer, as well as being the gateway for the institutional (juridical) implementation of Islamic values in Indonesia. constitutional) which applies in the Unitary State of the Republic of Indonesia (Shihab, 2012).

After the change of regime, from the New Order to the Reformation era which began in 1998, it has brought major changes in various fields including the legal field. The debate between Islam and Pancasila has strengthened again. One of the reasons for this was the strengthening of the Islamic political movement

in Indonesia, which at that time had experienced democratization and sought to accommodate Islamic sharia in the regions.

Based on the problems above, this article aims to explain three important things including, the dynamics between religion, law and politics in Indonesia, then the development of Islamic law in Indonesia in the reform era, as well as factors that become opportunities and challenges for Islamic law amidst the plurality of national laws in the reform era. . This research uses library research based on qualitative descriptive data about the history of the development of Islamic law. Research sources were obtained from various references such as legislation, books, journals and other references that discuss the history of the development of Islamic law in Indonesia.

Background to the 1998 Reforms

The Reformation event that occurred in Indonesia in 1998 became a movement that aimed to bring about change and renewal. Especially improving the order of life in the political, economic, legal, social and religious fields. With this, reform has a new formula for the order of life of Indonesian society towards an even better direction (Pandji, 2008). The eruption of reform at that time was a collection of disappointments that had previously accumulated.

The reform movement was born as an answer to the crisis that hit various aspects of life. The economic and political crisis are the main factors that encourage reform, so that these two fields influence other fields such as law, social, cultural and others. Therefore, reform is considered an agenda that is non-negotiable and must be implemented immediately. The movement carried out by many groups of society, which is based on the spirit of change towards a better direction, is marked by the existence of issues that make some people, especially students, feel that there must be steps taken by the government to immediately overcome existing problems. The emergence of various problems such as the economic crisis and political crisis makes reform a necessity that must be carried out immediately by the government. The political conditions experienced turmoil which caused a crisis in the economic and legal fields which ended up making society suffer even more (Sirot and Atmaja, 1998).

Islamic Law in Indonesia in the Reformation Era According to Experts

A pluralist state has consequences that impact the way or point of view of viewing religion, especially religion - Islamic law. This phenomenon seems to be justified, one of which is by observing the development of the study of Indonesian law and Islamic law in Indonesia, which is very vulnerable to differences and conflicts from time to time (Yudha, 2017). As an Indonesian legal expert, Ratno Lukito explained that Islamic law in Indonesia is based on the issue of positivism which is understood as ensuring that the values of Islamic teachings work in harmony with various other values that have developed in Indonesia and are totally integrated as part of system development. national law, through the transformation of a plurality of values into national law without sacrificing certain laws or values. According to him, this effort requires a strong understanding between sacred law and secular law (Luko, 2012).

The theory of eclectic Islamic legal thought put forward by Ahmad Qodri Azizy developed Islamic legal thought with a theory that was critically formed by selecting from various sources and teachings as an effort to reformulate Indonesian Islamic law. His argument is exemplified by the Compilation of Islamic Law (KHI) regulations as a national legal product in terms of language and substance which still gives rise to various understandings. Its orientation cannot be separated from the idea of national political struggle with Islamic law by eliminating the dichotomy between national legal science and Indonesian Islamic legal science (Azizi, 2003).

According to Ahmad Gunaryo, the long history of the dynamics of Islamic law has proven that the existence of Islamic law in the archipelago cannot be separated from an understanding that is appropriate to culture. According to him, the adaptation of Islamic law to various cultures can be explained, among other things, by building a legal reconciliation that is accommodating to the dynamics of Islamic law so that through reconciling Islamic law with national law a truly national law can be formed (Gunaryo, 2006).

Ahmad Syafi'i Maarif stated that the development of Dutch colonialism which succeeded in taking over all the power of the Islamic kingdom in Indonesia had the impact of changing Islamic law little by little, which was trimmed down, until finally what remained - apart from worship - was only part of family law (marriage, divorce, reconciliation, inheritance) with the Religious Court as the implementer so that reorientation is needed according to the plurality of laws in Indonesia. According to him, strategic steps are

needed to be able to form a legal culture that is in harmony with the legal plurality that is developing in Indonesia (Maarif, 1996).

From the various opinions above, it confirms that the dynamics of Indonesian Islamic law is a form of national legal political dynamics related to the development of Islamic legal studies regarding al-Din—Shari'ah—Fiqh which is really needed along with the development of Indonesian social culture by packaging the study of fiqh with language. modern law. This is also an effort to straighten out perceptions about sharia through the Religious Courts, especially the judges, to familiarize Muslims (ulama-ulama) with jurisprudence, and to create a compilation of Islamic law and legislation in accordance with the needs of the Indonesian people and their social culture (Arifin, 1996).

The Development of Islamic Law in Indonesia in the Reformation Era

In human development, it has become commonplace that humans always form groups, even though they only consist of at least a few people. The human need to establish social relationships will give rise to elements that are inevitably present as guarantors of harmony and harmony, for example elements of order, social systems, social institutions and social control. Every change in a social institution will also result in changes in other social institutions (Rizal, 2005). Observing the social reality and political dynamics of Islamic law in Indonesia, Safa'at concluded that the legal politics of establishing state law related to religion can be seen from the three objectives of its formation. First, to unify the laws that apply to Muslims. Second, to maximize the (economic) potential possessed by Muslims. Third, protect and facilitate the implementation of religious life. These three goals are secular. Then according to him, the limits of Islamic law which can become the substance of state law are, (1) related to religious areas in external forums, and not internal forums; and (2) is not part of public law, except for certain aspects in Aceh. These two limits on the application of Islamic sharia through national law demonstrate the form of secularity needed to balance or accommodate the diversity of Indonesian society (Farisi, 2021). In the context of legal reform, Ismail Sunny put forward something that should be considered by Islamic legal experts, which illustrated that legal politics as a process of accepting Islamic law is described into two periods: first, the persuasive source period where every Muslim is believed to be willing to accept the application of Islamic law. That. Second, the authority source period where every Muslim believes that Islamic law has the power to be implemented. In other words, Islamic law can apply in a formal juridical manner if it is codified in national legislation (Nawawie, 2004).

To strengthen the transformation of Islamic law into national legal supremacy, it clearly cannot be separated from legal politics. In this connection, the majority of Muslims should be able to exert a strong influence in the formulation of national political and legal policies. However, a majority alone is not enough because the flow of globalization has an interest in national legal political policies and in this case the importance of unity and common views among Muslims in influencing national legal political policies. Thus, the transformation of Islamic law in the development of national law receives an adequate portion and may not dominate. Looking at Islamic law in Indonesia, Jaenal Arifin believes that;

.....the strong existence of religious courts is not a product of politics of law (legal structure) or legal substance, but a product of social and cultural power (Arifin, 2004).

This opinion shows that the influence of Muslims in the realm of legal system development in Indonesia can be said to be quite weak. This shows that the formation of religious courts is not a product of legal politics (legal structure) or legal substance but rather a product of social culture. Politically, opportunities for Islamic law to develop are very open through legislative aspirations. Islamic parties have the opportunity to legislate Islamic law in order to make policies based on Islam (Utama, 2018). Several national legal products related to the application of Islamic law include:

1) Law no. 14 of 1970 concerning the subject of judicial power emphasizes that the Indonesian national justice system is composed of general justice bodies, military justice, religious court and state administrative court. Here it appears that religious justice is one of the main elements. Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 concerning Banking,

2) Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law which consists of three books, namely Marriage Law, Inheritance Law, and Endowment Law.

3) Law no. 23 of 1999 concerning Bank Indonesia which further strengthens the position of sharia economic activities in Indonesia,

- 4) Law Number 21 of 2008 concerning Sharia Banking,
- 5) Law no. 17 of 1999 concerning the Implementation of the Hajj, Law no. 13 of 2008 concerning the Implementation of the Hajj Pilgrimage, and Law no. 34 of 2014 concerning Hajj Financial Management,
- 6) Law no. 38 of 1999 concerning zakat management, amended by Law Number 23 of 2011 concerning Zakat Management,
- 7) Law no. 18 of 2001 concerning Nanggroe Aceh Darussalam which gives special autonomy to the Special Region of Aceh to implement Islamic law,
- 8) Law no. 3 of 2006 as a result of amendments to Law no. 7 of 1989 concerning Religious Courts which provides new authority in the form of settling sharia economic disputes, also Jefik Zulfikar Hafizd 181 Tamaddun: Journal of Islamic History and Culture, Volume (9), Issue (1), July 2021 Law no. 50 of 2009 concerning the Second Amendment to Law no. 7 of 1989 concerning Religious Courts,
- 9) Law no. 41 of 2004 concerning Waqf, with PP. No. 42 of 2006 concerning Implementation of Law no. 41 of 2004 concerning Waqf, and so on.

Opportunities and Challenges for the Development of Islamic Law in Indonesia

Along with the growth and development of Islamic law, several reasons can be raised that provide opportunities for Islamic law to continue to exist and be maintained in the implementation of law in Indonesia. First, demographically, the majority of the population in Indonesia is Muslim. This reason must be taken into consideration and become a reference for the formation of positive law that applies in Indonesia. Second, what is an opportunity for Islamic law legislation in Indonesia is the existence of juridical reasons. Based on an understanding that assumes that Islamic law in Indonesia applies normatively, where Islamic law regulates human relationships with God, such as the implementation of prayers, fasting, zakat and Hajj, and formally juridical, is the part of Islamic law that regulates human relationships with other humans. and objects in society. Third, constitutional reasons.

Pancasila, which is known as the umbrella for Indonesia's legal state and the 1945 Constitution, gives religion an important position and guarantees its position in the national legal system. This opens up opportunities for the development of law that originates from religion, especially the first principle of Pancasila and article 29 of the 1945 Constitution. Legal development as outlined in various regulations is directed at growing public legal awareness. The legal awareness of the majority Muslim community cannot be separated from Islamic law and has proven that the national law desired by the state is a law that accommodates and incorporates religious law and does not contain norms that conflict with religious law. Fourth, political reasons (siyasah), although limited in scope, the Indonesian political system provides opportunities for the growth and development of Islamic political aspirations, including aspirations to transform Islamic law. Fifth, scientific reasons that view Islamic law as a science have long been the subject of scientific study, both from Muslims themselves and from non-Muslims from various circles and different scientific disciplines. In Indonesia, it is a common assumption that when discussing political life today it is never free from religious issues, especially Islam. Political studies involving Islam seem to be followed by studies of other social sciences, including sociology and anthropology, and even economics. This opens up opportunities for the Islamization of science (Jazuni, 2005).

Meanwhile, the real biggest challenge for Muslims to realize the institutionalization of Islamic law is to mobilize a large synergy that is systematic, constructive, and equipped with evidence/reasons to carry out the struggle in relation to the implementation of Islamic law. This creates a protracted dilemma without any confirmation and common ground in efforts to transform Islamic law. Apart from that, it also has an impact on the courage of legal experts who are reluctant or even afraid to study Islam in relation to law or in standard terms, 'Islamic Law', because of the "Islamophobia" of the authorities for decades. This reluctance may also be caused by the fact that many of our legal experts are very devout followers of colonial law (Efendi, 2006).

CONCLUSION

The reform movement that was born was a response to the crisis that hit various aspects of Indonesian life since the New Order era. The economic and political crisis are the main factors that encourage reform, so that these two fields influence other fields such as law, social, cultural and others. Therefore, reform is considered an agenda that is non-negotiable and must be implemented immediately. Politically,

opportunities for Islamic law to develop are very open through legislative aspirations. Islamic parties have the opportunity to legislate Islamic law in order to create policies based on Islam. Apart from that, there are also several opportunities and challenges for developing Islamic law in Indonesia.

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