THE IMPLEMENTATION OF ISLAMIC LAW: THROUGH ISLAMIC LAW POLITICS AND NOT THROUGH TERRORISM

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Abstract

In the context of Indonesia, empirically and historically there is no doubt that Islamic law is one important element in the formation of national law (positive law). Also, sociologically, Islam as a religious doctrine is to have religious values that have been believed by Muslims to be a system of life that is regarded as the law derived from religion by most Indonesian people. Judging from the scope of realistic politic or ideological-empiric, there is a serious debate in the formulation of the basic constitution of the country is currently taking place in the sessions Agency of Efforts Investigation for Indonesian Independence (BPUPKI), May 28-June 1, 1945 and July 10 to 17, 1945, and in the sessions of the Preparatory Committee for Indonesian Independence (PPKI) 18 to August 22, 1945, in the framework of the preparation and approval of the 1945 Constitution (Halim, Ahkam Journal, Vol. XIII, No. 2, July 2013, p. 260). Advanced implications of the ideological polemics are the pros and cons in the middle of the people in the realm of law regarding the implementation of Islamic law in Indonesia. Socio-politically, faced with the reality of the plurality of the Indonesian society is very complex, the response of Muslims themselves against the implementation of Islamic law in Indonesia, there are at least 3 (three) polarization. There are most of Muslims who want that Islamic law is substantive-formalistic enacted in regulation and legislation. There are others who believe that what an important is the values (moral ethics) of Islam entered in national law. While others, they just refuse altogether implementation of Islamic law. As far as the writer observation, that response in reality has given birth the diversity pattern of the struggle among Muslims such as a radical-physical-physical approach demanding implementation of Islamic law in totality (kaaffah) with terror manner and acts. Even though when considering various aspects, such as the persistence of the variations and mozaic of thought Muslims on the relationship of the shari’a and the state, there are many law schools of thought (madzahib fiqh) related to the products of Islamic law, the configuration of socio-political determining the implementation of Islamic law, there are variables of social, cultural, political and history are diversities that influenced the formation of the law in various Islamic countries (Maula, Hermeneia, Journal of Islamic Studies at the Interdisciplinary Vol.2 No. 2 July-December 2003, p. 240), different practical application of Islamic law, and depend on who ruled government authority in the formulation and decision making. Departing from these reasons, the author would like to propose a recommendation that the actual implementation of Islamic law in Indonesia can be approached from a law politic approach of Islamic as a public policy-making process and not by means of terrorism.

Keyword: politics of law, Islamic law, socio-politic, terrorism.
INTRODUCTION

Islam entered Indonesia according to Hamka at the beginning of the 7th century. That is, Islam entered Indonesia in the early hijriyah, even during the first Guided Caliph ruled. Islam had started his expedition to the Indonesian archipelago when a friend of Abu Bakr as Siddiq, Umar bin Khattab, Ustman bin Affan and Ali ibn Abi Talib in control as the Commander of the Faithful (HAMKA in Jacob, Kalam: Journal of Religious Studies and Islamic Thought, Volume 1, Number 1, June 2013). Since the beginning of the Islamic presence at the time, the legal system of Islam was practiced and developed within the Islamic community and the justice. But the legal system that was still patterned fiqh discussion, was still legal doctrine and jurisprudence system oriented to the teachings of priests schools (Mardani, Law Journal, Volume 16, No. 2, April 2009; 268-288).

In the era of imperial power and the Islamic kingdoms, religious courts already presented formally. There was named justice prince such as in Java, the Court of Syar’iyah in the Sultanate of Islam in Sumatra, courts of Qadi in the Sultanate of Banjar and Pontianak. But although formally been established religious courts and scholars status played a role as advisers and judges, have never compiled a systematic positive law. Applicable law still abstract was drawn from the content of the doctrine of jurisprudence (Mardani, ibid).

Sociologically and culturally, Islam as a religious doctrine is to have religious values that have been believed by Muslims in Indonesia has been used as a system of life that is regarded as the law derived from religion by most Indonesian people. It is reasonable considering Islamic law is the law that flows and has been deeply rooted in the culture of Indonesian society, therefore, a Islamic legal classified as law who live in the community (the living law). Not merely because Islamic law is the religion entity professed by the majority population of Indonesia, but in the action dimensions of Islamic law has become part of the tradition of (indigenous) communities that is sometimes considered sacred (Maula, Hermeneia, Interdisciplinary Journal of Islamic Studies, Volume 2, No. 2, July-December 2003; 239-277).

In its development historically, the implementation of Islamic law in Indone-
sia have ups and downs along with the political regime and the ruling government. In the colonial period of the Dutch East Indies government, which applied *receptie theory* initiated by Snouck and van Vollenhoven, since that, Islamic law systematically and deliberately marginalized. Instead, customary law used and displayed. Then the Dutch East Indies government sought to impose only two legal systems, namely customary law for the Bumiputera class (*indigenous people*) and European law for Western people (see, Maula, 2003, Mardani, 2009, *ibid*). The struggle between customary law and Islamic law that occurred could not be separated from the influence of circumstances of social, cultural and political developed. The applicability of Islamic law in Indonesia underwent a long dialectic which can not be separated from interest groups concerned that influence the -implementation of- policies incorporated.

Policy making Islamic law as a state law actually getting chances and opportunities in line with the process of forming the state of Indonesia. But in reality, as the colonies got a new independence from Western colonialism such as Turkey, Egypt, Sudan, Morocco, Pakistan, and Algeria, Indonesia is also facing problems in the context of the proper relationship (*visible*) between Islam and politics, between sharia and country. Judging from the level of *political* or *ideological* *realistic-empirical*, serious debates have occurred at the time of the formulation of the basic constitution of the Indonesian entity when it took place in the sessions of Agency of Indonesian Independence Efforts Investigation (BPUPKI), May 28-June 1, 1945 and July 10 to 17 1945, and in the sessions of the Preparatory Committee for Indonesian Independence (PPKI) 18 to August 22, 1945, in the framework of the preparation and approval of the 1945 Constitution (Halim, *Ahkam Journal*, Vol. XIII, No. 2, July 2013, p. 260), to the elimination of 7 (seven) words in Jakarta Charter that animates the Act of 1945 and is a continuum in the constitution.

Advanced implications of the *political-ideological polemics* are the *pros and cons* in the middle of the community in the realm of law regarding the implementation of Islamic law in Indonesia. There is polarization between the two groups of thought, namely that wants sharia (*law*) of Islam is implemented formally, and who rejects the formalization of Islamic law. Tension and attraction that occurs between those who want to apply Islamic law in rigid and a more moderate group that put
more emphasis on the substance of the law, especially criminal law (Naseh, *Mukaddimah*, Volume XV, No. 26, January-June 2009). Whereas in the context of Indonesian society, empirically and historically can not be denied that when discussing the implementation of Islamic law in Indonesia, actually Islamic law has been applied, which is a key element in the formation of national law (*positive law*) besides customary law and western law (Subekti 1982; 6, Lev, 1986; 24 in Halim, 2013, Mafud MD, 1998). That implementation has not the totality (*kaaffah*), it is something that must be pursued. But the core issue which is very important is to realize the implementation of Islamic law, how it is taken.

**RESPONSE MUSLIMS AGAINST THE IMPLEMENTATION OF ISLAMIC LAW IN INDONESIA**

Indonesia is a pluralistic society, both in terms of race, ethnicity and religion spread from Sabang to Merauke, in addition there is also the assimilation and acculturation between religious and ethnic groups adherents. When discussing the implementation of Islamic law in the context of Indonesia is certainly the center of attention is how to position Islamic law on national law. Indonesia is a nation state in unitary form. As a unitary state that framed plurality people, it is applied in organizing and taking care of this nation is the application of national law. To realize a national law for Indonesia which consists of various ethnic groups with different cultures and religions, plus the diversity of the law left by the colonial government, it’s not an easy task. Development of national law would apply to all citizens regardless of their religion, must be done with caution. Therefore, the various desires and efforts of Muslims to realize the implementation of Islamic law in Indonesia still must consider the aspirations and interests of people of other faiths.

Related to implementation of Islamic law in Indonesia, there is no doubt that among Muslims themselves there are diverse perceptions and attitudes. First, the group wants Islamic law can apply in Indonesia to set its adherents. Second, there are groups who want the unity and uniformity of the law. Islamic religion only as a raw material in the formation of national law. This group wants to maintain a balanced relationship between sharia and state. In certain circumstances do the formalization of Islamic law in legislation, while others, Islam as a source of eth-
ics-moral. Third, groups that do not want Islam law is institutionalized and there is even a tendency to get rid of Islamic law. This group represents a small fraction of Muslims wing nationalist-secular. Their outlook can be called liberal-secularistic (Zein, 1997, Sjadzali, 1993, and Arifin, 2000 in Halim, 2013; 260-261).

In the classification of Adnan Qohar, thinking that developed among Muslims in relation to the implementation of Islamic law in Indonesia, there is a thought characterized formalistic-legalistic stating that Islamic law must go through state institutions. This view was expressed by Habib Riziq Shihab (Chairman of the Islamic Defenders Front). For him, to keep the passage of Islamic law it must be formulated in a constitution. He did not agree there was a separation between the substance and the formal (Zada and Edyar in Rosyadi and Ahmad, 2006; 20-21). This view is shared by Hizb ut-Tahrir and the Indonesian Mujahidin Council (MMI) (Jahroni, Journal of Religion and Philosophy, Vol. IV. 1, 2002; 42-43). Structuralistic thinking, which emphasizes transformation in social and political order so that Islamic patterned, while from the cultural approach focuses on the transformation in social behavior in order more Islamic. Both are highly synergistic relationship, for transformation through structural approach intended to influence the transformation of social behavior so that more Islamic. Instead, the transformation of social behavior is expected to affect the transformation of institutions and political-social institutions become Islamic anyway. Structural approach requires a political approach, lobby or through the dissemination of Islamic ideas, then become input for public policy.

Other thought, is the only culturalistic approach that requires socialization and internalization of Islamic sharia by Muslims themselves without direct support from the political authorities and state institutions. Proponents of this approach want to make Islam the source of ethics and morals, as a source of inspiration and motivation in the national life even as a complementary factor in the formation of the social structure. The main supporter of this approach is Abdurrahman Wahid. He is more likely to make Islamic law as a moral imperative rather than a legalistic-formalistic structure (Rosyadi and Ahmad, ibid, 28-29). Lastly, substantial-applicative approach. This thinking was born from a theoretical Islamic teaching that dogmatic and applicable. Its application is submitted to the Muslims themselves, whether it should be based on the authority of the state or structural, cultural, substantial, indi-
vidual or collective pattern

Various perceptions, thoughts and attitudes above clearly not devoid of polemics and political interest in determining the position of sharia in the country. In theory of the political power analysis, all the disputes can not be separated from political interests, whether the authorities, pressure groups and or interests, political elite and society. The differences of view is clearly visible when there is interaction between the centers of power both at the supra-structure and infra structure in the midst of society, such as government, political parties, the military, civil society organizations, religious organizations, NGOs, the Muslim community and non Muslims, even the mass media and social media in the process of implementation of Islamic law in Indonesia.

POLITICAL APPROACH OF ISLAMIC LAW OR PHYSICAL STRUGGLE?

In the plural Indonesian society, law is always live and develop in line with the dynamic development of a society, both in terms of socio-cultural and political. Any social institution can not escape from the influence of the social and political environment surrounding them, either the law itself or other social institutions, including Islamic law and institution. Similarly, in the context of the efforts of Islamic law implementation into the state law must firstly win the battle of socio-political and even to go through the political process in the legislature (Coulson, 1991; 1, 149 in Halim, 2013; 261-262).

The law is the product of politics so when discussing the politics of law tends to promote political influence or political systems to the construction and development of the law. Law is the attraction result of various political forces that manifest in the laws. Satjipto Raharjo stated that the law is the instrumentation of the decision or political will so that the rulemaking laden with particular interests. Lawmaking are become the clash area of interests. Agency of Making body of act (Legislature) will reflect the strengths and interests that exist in society. Besides that configuration, the interventions of external and internal governance even the global political interests indirectly participate to influence in the formation of legislation
The intervention is carried out mainly by groups who have power and strength, whether social, political and economic (Rahardjo, 2002; 126-127).

One of the dominant groups and close to the political power so they will open opportunities to gain power in applying certain laws and making other policy in accordance with the aspirations and political thought. The fight of political dynamics is then lead to a change of a legal product. Hence there is the adage which states that ‘who is in power, then the policy or (product policy) in the form of the applicable law’ (see, Halim, 2013, Maula, 2003).

Following the theory of group in political science, public policy is the product of the struggle of a group. What is called public policy is the balance achieved in the battle group at any moment that occurs, and public policy represents a balance where competing factions or groups continually strive to advance their interests (Latham, 1965; 36 in Anderson, 1994; 27). Product of public policy is a manifestation of the aspirations and interests groups to gain influence in decision-making.

In connection with the efforts of Muslims to the implementation of the Islamic Law by the state or the institutionalization into the constitution and the act as a political process, relying on the concepts and theories that exist in political science (see, Laswell, 1936; 295, Lasswell and Kaplan, 1950; 77-102, Dahl, 1957; 201-215, Budiardjo, 1985; 8-13, 1991; 9-29, Surbakti, 1984; 33-47), according to the author can be done by:

a. influencing the political system in the process of making public policy with social power, or economic, political owned,

b. involved in the political system through membership in the legislature as public policy makers, or involved in the executive branch in the public policy making process together legislative bodies,

c. using the power by coercion to other parties or the widest audience in order to meet and or carry out the will and interests,

Using of force by coercion in championing the interests of an individual or a group, as a worldview and actions, nothing else is based on the definition and
meaning of politics is the *fight and maintain power*. Also when politics focused on aspects of domination and coercion, then tend to view politics as a conflict, fight, domination, coercion, conflict and so forth. Similarly, when politics is believed to be only as a tool to gain superiority, power, wealth, pride, satisfaction, and so on. But it would be much different if interpreted and understood that politics is a means to realize the public benefit or a common interest. As a principle in Islam that teaches his people, that in order to realize and achieve a certain goal does not automatically justify whatever means done, then the glorious purpose is to be taken with the right ways and means.

In the midst of the Muslims in Indonesia, there are some phenomena of using physical force -including the using weapon- to commit acts of terror behave on Islamic law enforcement demands. Their violent acts was apparently used as a justification for certain Islamic groups that the efforts of Muslims in the implementation of Islamic law to the state should be done with a physical struggle, even identified with the armed opposition. Is the act of terrorism justifiable, considering the actions just destroying public facilities, disrupting security and public order and causing loss of life and property of the people. According to Quran chapter al Maaidah verses 33, the offender must be given the the big punishment, in the perspective of Islamic studies of the scholars of the Salaf such actions are categorized as major sins (*al kabaaar*) (Dhahabi, 1994; 69-70, Haitsami, The Section II, 1987, 239-241).

**THE INSTITUTIONALIZATION OF ISLAMIC LAW THROUGH THE PUBLIC POLICY MAKING**

According to the author, the right and ideal choice to embody the implementation of Islamic law in Indonesia is through the political process of Islamic law. There are several reasons that could strengthen this choice. First, the theories that have been developed by experts in constitutional law that confirms the enforceability of Islamic law within the framework of national law. Prof. Hazarin developed a theory called *the theory receptie exit*, is to cancel the *receptie theory* produced by the Dutch colonial government to get rid of Islamic law for the native (*indigenous*) people of Indonesia and replace it with customary law. Since the independence of Indonesia and the implementation of the Constitution 1945, *receptie theory* is no
longer valid and the exit of the legal system of Indonesia. In accordance with the Constitution 1945 article 29, paragraph 1, the state of the Republic of Indonesia is obliged to establish national laws that the material law is Islam. State has a duty to this. Religious law into national law is not the law of Islam but also other religious law for religious adherents. Then, exit receptie theory developed by Sajuti Talib become a contrario receptio theory which states that the implementation for Indonesian Muslims is Islamic law, customary law applies to Muslims that customary law does not conflict with religion and Islamic law (Thalib, 1987; 52-53, 37-40 in Maula, 2003; 251, Mardani, 2009; 269).

The assertion of receptie theory is no longer valid after Indonesia’s independence and the implementation of the Constitution 1945 as the state foundation-though not load the seven words of the Jakarta Charter- by Prof. Ismail Sunny. Also according to him, Islamic law applies to the Indonesian people who are Muslims in accordance with article 29 of the Constitution 1945. This era is referred to him as the Acceptance Period of Islamic law as a source of Persuasive (Persuasive source) (Sunny in Cik Hasan Bisri ed., 1988; 96). Supporting the applicability of Islamic law in Indonesia is the theory of the constitution and the theory of accommodation. The theory of the constitution is purposed within the legal framework of political law here is the transformation of the values of religious law in the Indonesian National law is an obligation by the state constitution to establish a national legal system through constitutional democratic mechanisms. This theory is built on the argument that structurally the Constitution 1945 positions the religion at a high position. The Constitution 1945 recognizes and embraces the idea of Almighty God in the life of society, nation and state. The theory of accommodation is built on the argument that the state is obliged to accommodate all subsystems of national law into state law by using benchmarks of Islamic law as the law adopted by the majority of the Indonesian people. Progressing towards expanded adoption against the Islamic legal system that relevant with the dynamics of legal awareness in Indonesian society, as outlined in the various forms of regulation and embodied in the essence of the legal institutions developed can be attributed also to the philosophical considerations and constitutional (Halim, 2013; 268).

Following the theory of existence, is to formulate the Indonesian legal cir-
cumstances, past, present, and future, it asserts that Islamic law in Indonesia national law, written or unwritten. It exists in various fields of life of law and legal practice. This theory explains the existence of Islamic law in the National Law of Indonesia in a sense, it was an integral part of National Law, independence recognized, it has the power and authority and given status as National Law, also means that the law of the National and Islamic law acts as a material filter of National law in Indonesia and in a sense as the main ingredient and the main elements (Mardani, 2009; 275).

Second, relying on the various theories in the science of law mentioned above, is certainly no excuse for blocking epistemologically for the implementation of Islamic law in Indonesia institutionally. This conceptual theoretical foundation according to the authors received support from the empirical reality as the result of research conducted by the Faculty of Law, University of Indonesia, in cooperation with the National Law Development Agency in 1978-1979 in the fourteen regions across Indonesia included the islands of Sumatra, Java, Kalimantan South, and West Nusa Tenggara seen a strong tendency among the public to apply Islamic law for Muslims. 80% of those interviewed expressed a desire for the implementation of Islamic law for them than any other law (Ali, 1990; 239-240 in Qohar). It is also a reality that can not be denied that the majority of Indonesian people consist of Muslims. In democracy theory, is very reasonable and logical that Muslims as the majority of the state, if indeed they are as one people among the followers of other faiths, wanting implementation of Islamic law at least for themselves as followers of the political regime in rule is obliged accommodate.

Third, in the policy-making process which is expected to be able to bring a legal product that is Islamic law and national law in which there is Islamic law, of course, social and political configuration that growing concerned. Sociologically and culturally, religious values of Islam and Islamic law itself must be internalized in each individual, group and moslem families and socialized in the middle of the Indonesian moslem community effectively. As a moslem and moslem society are required to believe, appreciate and practice the teachings of Islam in various aspects of their life. Perspectives, attitudes and behaviors that Islamic when they are personified in the figures of moslem person and the Islamic community, it will establish commonality of their feelings and needs to Islamic law.
Aspirations and interests of the moslem who want enforcement of Islamic law can be presented to the legislature in the form of public issues that attract the attention of the government to respond to the systemic and institutional agenda. Submission of the agenda requiring a precise articulation, a solid organizing and systematic aggregation. Proposal submission process demanding political support from the members of the legislature, either through commission or faction to join in fighting the moslem agenda into legislation. If the various approaches and policy alternatives are offered in compliance with the purpose and consequences can be taken into account in the process of public policy-making stage, so it can be born a policy product as expected in the form of law.

CONCLUSION

Without ignoring some of the obstacles and difficulties faced by political and technical legislation in Islamic law in Indonesia, at least the needs and interests of moslems to practice Islamic law in totality can be accommodated by the political process and structures ruling. With a hope that moslem society can run obedience and adherence to their religion so that do not leave the view that the government rejected the implementation of Islamic law in Indonesia.
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