

ISLAMIC LEGAL THOUGHT IMPLEMENTATION IN INDONESIA

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ABSTRACT

Islamic law is a system of law derived from the Qur'an and hadith, which subsequently evolved from legal philosophy. The result of legal thought is the production of legal documents based on the requirements of the community. In Indonesia, Islamic law grows and evolves in the form of four products of legal thought: fiqh, ulama fatwas, court rulings (jurisprudence), and laws. In Indonesia, the four products of legal thinking serve as rules for Muslims in national, state, and social life. This study sought to identify the outcomes of Islamic legal thinking in Indonesia. The technique employed is qualitative. According to the findings of this study, Islamic legal thought in Indonesia is comprised of the products of fiqh thought, fatwa thought, court decision thinking (jurisprudence), and legal thought. This product of Islamic legal philosophy touches on the order of Islamic society and, despite being independent of sharia law, can serve as a firm legal foundation.

INTRODUCTION

Islamic law comes from the Qur'an and hadith, which later developed into a product of legal thought. The product of legal thought produces legal materials based on the community's needs (Kurniati, 2015). Then it is formed and formed into a concept to be implemented and obeyed as a result of the product of legal thought. Islamic legal theory is usually called Islamic legal theory, recognizing various sources, but the main source is the Qur'an and hadith as primary sources. At the same time, other sources are secondary sources that come from *ijtihad* and interpretation, or the achievement of a consensus commonly called *ijma'* (Hallaq, 2001). This consensus is an agreement reached that is considered to represent legal certainty and or to represent the majority of the Islamic community.

Islamic law refers to the various legal systems that have been and continue to be developed in accordance with the Islamic religion (Salaymeh, 2015). In the social history of Islamic law, recorded and written was first applied in the first century Hijri in Medina by the Prophet Muhammad and based on the constitution of the Medina Charter. The charter's preamble is written that the Medina Charter applies to people who believe and embrace Islam and come from the Quraysh and Yasrib tribes. Apart from Muslims, it also applies to those who follow them, unite themselves, and struggle with them (Ahmad, 2014). The essence of the charter is an agreement/agreement between Muslims, Christians, and Jews (non-Muslim communities), which are used as statutory provisions. Prophet Muhammad SAW

guaranteed life for them (non-Muslims), property rights, religion, and complete freedom to practice the teachings of their respective religions. This proves that Islamic law is not applied to coerce and oppress other people but to serve as a rule that protects the entire nation in social life.

The rules, which are the result of the product of Islamic legal thought, when viewed from the social history of Islamic law, have grown and developed since the time of the Prophet Muhammad until now applied in Indonesia (Kurniati, 2013). However, this social history of Islamic law emerged in the Western world at the end of the 20th century, when Islamic law (fiqh) was recorded in various literature and presented its complete portrait. With the bookkeeping of Islamic law, Muslims can find the history of the growth and development of Islamic law starting from the time of the Prophet Muhammad. until modern times, including the reform era in Indonesia.

Islamic law grows and develops in Indonesia, formulated in four products of legal thought: fiqh, ulema's fatwas, court decisions (jurisprudence), and laws (Supardin, 2017). The four products of legal thought serve as guidelines for Muslims in the life of the nation, state, and society in Indonesia.

METHOD

The method utilized is qualitative. Qualitative research is conducted in natural settings, directly with the data source, and the researcher is the primary instrument, more descriptive and data collected information is in the form of words or images, so the emphasis is not on statistics (Creswell, 2017). Additionally, this inquiry utilizes library research. Library research is the collection of library data gathered from numerous sources of library information relating to the subject of the research, including abstracts of research results, indexes, reviews, journals, and reference books (Sugiyono, 2010). This step collects information from prior results of the study.

RESULTS AND DISCUSSION

A. Products of Fiqh Thought

The social history of Islamic law is a science that studies the life history of a society that has to do with the process of the birth and development of Islamic law. The existence of a social history of Islamic law as science can provide a direction and purpose so that it can produce products of Islamic legal thought in Indonesia, such as fiqh. Jurisprudence is closely related to Islamic law, so sometimes, fiqh is equated with Islamic law.

In the Al-Munawwir Dictionary, fiqh(فقه) means to understand and simply according to language, and fiqh means knowing and understanding. The term fiqh is interpreted the same as religion prescribed by Allah for servants whom complete religious laws related to words, deeds, engagements, etc.

Meanwhile, according to jumhur fuqaha, fiqh is the science that explains the laws of syara', which is obtained from the tafshili, namely the arguments about specific laws taken from them by way of ijthad (Ash-Shiddieqy, 1991). According to the meaning of the term most fuqaha, in other sources, fiqh is "all sharia laws" taken from the Book of Allah SWT. and the Sunnah of the Prophet Muhammad by deepening understanding and surveillance, namely utilizing ijthad and istinbat (Ash-Shiddieqy, 1978). Knowing fiqh means reducing debate about the caliphate issue, meaning that tolerance in the caliphate is upheld. Jurisprudence is a basic science for understanding Islamic teachings, including Islamic law, which is understood and enforced in Indonesia.

According to H. Amir Syarifuddin, the word *fiqh* (فقه) means deep understanding. If understanding can be used for external things, then *fiqh* means understanding that conveys *zhahir* knowledge to inner science (Syarifuddin, 2003). *Fiqh* about something means knowing one's mind to the depths of that thing. People who know *fiqh* mean implementing Islamic law with deep conviction. So that in doing and praying, including in worship, it is not easy to be swayed by the surrounding influences.

Knowledge generated from *fiqh* can lead people to act within the level of the enforced Islamic law. The meaning of the term Islamic law is the law that is believed to be related to Islamic sources and teachings, namely the practice of law in the form of human interaction, in addition to *jinayat* (Islamic crime) (Amrullah, 1996). However, it is possible to use it in Islamic crimes, which will also be applied in the life of the Islamic community, both regionally or locally as well as nationally, such as domestic violence, and is now in the draft stage to be transferred to the authority of the Religious Courts. All provisions relating to pure worship (*mahdah*) are not included in the meaning of Islamic law in this discussion. This includes particular Islamic civil law, a positive law for Muslims, and applied law for the Religious Courts.

The Legal Dictionary explains that Islamic law (Indonesian) or *syara'* is the rules and provisions relating to life based on the Qur'an (Sudarsono, 2007). The Big Indonesian Dictionary explained that Islamic law is the rules and regulations relating to life based on the Qur'an and Hadith (Ministry of National Education, Big Indonesian Dictionary, Third Edition (Indonesia, 2011). That is, Islamic law is a product of Indonesian *fiqh*.

The definition of Islamic law or *syara'* according to the term *usul* scholars, is the *shari'a* doctrine concerned *khitab* with the actions of the *mukallaf* people by order or being ordered to choose or in the form of a decree (*taqdir*) (Khallaf, 1993). Islamic law is intended as a regulation relating to adult life in carrying out orders and leaving prohibitions based on the instructions of the Qur'an or hadith. According to TM Hasbi Ash-Shiddieqy, Islamic law is part of the science of *fiqh*. Because the science of jurisprudence is a collection of knowledge that is very broad in discussion, which collects various types of Islamic law in regulating life for the needs of a person, group, and society in general (Teungku, 2001). Then in the Encyclopedia of Islamic Law, the scholars of *ushul fiqh* define it with the demands of Allah SWT. related to the actions of the *mukallaf*, either in the form of demands, elections, or making something into a cause, condition, barrier, legal, invalid, *rukhsah* (remission), or '*azimah* (deed) (Teungku, 2001).

A book that discusses various issues of Islamic law such as worship, *muamalah*, crime, justice, *jihad*, war, and peace based on the results of the *ijtihad* of *fiqh* scholars in understanding the Qur'an and hadith associated with existing realities using various *ijtihad* methods.

B. Product of Ulama's Fatwa Thought

After *fiqh* thought, the second product of legal thought is the thought of *ulama's fatwa*, which is the result of the formulation of Islamic law. *Fatwa*, according to language, means the answer, decision, and opinion the *mufti* gives about a problem; advice of the pious, suitable lessons (Dahlan, 1999). According to *usul fiqh* scholars, *fatwa* means an opinion put forward by a *mujtahid* or *faqih* in response to a request for a *fatwa* in a non-binding case (Dahlan, 1999). This *fatwa* is a moral sanction that does not bind a person to give a *fatwa*, ask for a *fatwa*, or accept/obey the *fatwa*.

The *fatwa* is the result of the *ijtihad* of a *mufti* related to his problem or problem. The results of *ijtihad* *ulama*, called *fatwas*, are sometimes written as *fiqh* books to be guided

by Muslims in Indonesia. Ulama's fatwa is usually an appeal from a group of scholars, and sometimes it is a call from a particular ulema to the broader community or a particular community. The ulema is expert in the science of jurisprudence. Therefore, the product of fiqh thought cannot be separated from the product of the fatwa of the ulama because fiqh is the product of the *ijtihad* of the ulama.

The results of the ulama's fatwa in Indonesia are stated nationally in the form of the MUI (Indonesian Ulema Council) fatwa. In addition, there are two ulema fatwas sourced from Islamic organizations: Nahdatul Ulama and Muhammadiyah. These two Islamic organizations always color the MUI fatwa in Indonesia. This is influenced by political power and the system of government/ rulers in Indonesia.

C. Product of Jurisprudence Thought

The word jurisprudence (English) means the science of law (Echols & Shadily, 1996). Jurisprudence consists of two words, namely jurisprudence and prudence (prudential). *Yuris* means a legal expert or legal scholar, and prudential means wise (Indonesia, 2011). Jurisprudence is law teaching through the judiciary or a set of judges' decisions (Indonesia, 2011). (Echols & Shadily, 1996) Jurisprudence in Latin is *ius/ iuris*, meaning law, and prudential means expertise or skill, so jurisprudence means expertise or ability in law (Dahlan, 1999). Jurisprudence is the science of the main principles of law that specializes in the field of law in various aspects: its traditional analysis, the history of its origin and development, and the ideal character of the law (Dahlan, 1999). In the legal dictionary of jurisprudence, written jurisprudence, because if there is a fixed jurisprudence, judges will always follow in giving their decisions (Prasetyo, Simorangkir, & Erwin, 2010). Therefore, jurisprudence is a series of judges' decisions, which are then summarized in a court decision to be guided by the judges in applying legal regulations to hear and decide similar cases. The jurisprudence with the highest legal force is the decision of the Supreme Court of the Republic of Indonesia.

D. Products of Legal Thought

The products of legal thought cannot be separated from the results of other legal products. The law was born after receiving a positive response from the community, especially among the legislative and judicial institutions. A society that obeys the law has implemented statutory regulations because the law is part of the life order in the nation, state, and society. The law covers various legal, political and other socio-cultural aspects. Laws, according to the Indonesian language, are State provisions and regulations made by the government (ministers, executive bodies, etc.), ratified by parliament, signed by the head of state president, head of government, kings, etc., and have binding power; rules made by a person or body in power; law in the sense of a standard that is natural or by the characteristics of nature (Indonesia, 2011).

It is generally understood that Islamic law is a regulation that has been standardized in Indonesia to serve as a product of legal thought in Indonesia. Islamic law is also part of national law because the national law that applies in Indonesia is sourced from three law sources: customary law, western law, and Islamic law. Islamic law has long been known in Indonesia, namely since the days of the sultanate and colonialism until post-independence. However, Islamic law was made national law for Muslims after the promulgation of Law Number 7 of 1989 concerning Religious Courts on December 20, 1989. Then it was strengthened again after the unification of the roofs of judicial institutions at the Supreme Court of the Republic of Indonesia until the issuance of amendments to the law.

The results of the amendments to the law are based on Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning the Religious Courts, promulgated on March 20, 2006. The result of the amendments is the development of Islamic law materials in Indonesia, including sharia economics. Its parts have become the authority of the Religious Courts. The extension of the authority of the Religious Courts is based on Law Number 4 of 2004 concerning Judicial Power.

Thus, it can be understood that the development of Islamic law material in the future is not only limited to the civil field but also the criminal field. For example, future acts of violence in domestic life (domestic violence) will be published and regulated in the Agama Court. If the case in the household is a Muslim, then the one who resolves it is the Religious Court, even though there is a criminal element. This is evidenced by the expansion of the area of authority of the Religious Courts in the economic field of Muslims, which is called sharia economics. The birth law takes a long time and is not as easy as turning the palm. The law also requires socialization in the broader community so that in its implementation, it can be obeyed by all levels of Indonesian society.

E. Problematic of Islamic Legal Thought Products Islamic Implementation

Islamic law, whose two primary sources are the Qur'an and Sunnah, was not born in a culturally void society. Apart from being a divine concept that teaches the truth, it is also a guide to life and human life in all its aspects (Al-Qardhawi, 1993). Islamic law can be detailed in three things: First, instructions and guidance to obtain Allah's correct knowledge (ma'rifat) and the unseen world called *ahkam syar'iyah i'tiqadiyah*. Second, the instructions and provisions for developing the potential for goodness that exists in humans are called *ahkam syar'iyah khuluqiyah*. Third, the provisions and a set of legal regulations that regulate human relations with God, relations with fellow humans, and the environment (Yafie, 1994).

In responding to the corridor of Islamic legal products, it is necessary to understand that the basic rules come directly from Allah SWT. It cannot be changed because it has been present and was born as a Shari'a which is a direct decree from Allah to His servants so that they can become plural in life. Observing the form of each product of Islamic legal thought, it can be concluded that the main challenge that will be a problem to be faced in its application is the incompatibility between the legal rules that have been formulated with the conditions so that legal problems and the sense of justice of the community where the law is to be applied. The incompatibility problem, referred to as an irrelevant problem, is primarily experienced by fiqh books. This is because it is resistant to change.

For applying fiqh products, it is necessary to select a legal dictum and in-depth legal analysis so that the applicable fiqh rules must be by the conditions of society. It must be placed proportionally, namely with the aim that the application of the law is not explicitly implemented but is reinterpreted into a legal form that the community can accept.

Most people generally know fiqh as a law that comes directly from Allah SWT. Therefore it is the correct rule of law. Therefore, responding to other products of Islamic legal thought, such as court decisions, fatwas, and legislation, sometimes seems like this fiqh is not in line with these rules. Thus, the consequences of this understanding make people throw away the product rules of Islamic legal thought, such as court decisions and legislation for the separation of law from religion.

As for the fatwa, which, although it is a direct response to Islamic law, does not mean that the public can directly accept it, the fatwa given directly by a mufti which is a fatwa has a different vision and mission because sometimes there are fatwas that are born

individually so that there is a legal discrepancy. In addition, the fatwa is usually only oriented to certain fiqh books.

Regarding the efforts that need to be faced by issuing a fatwa by a mufti, the fatwa must be rational and cover all legal aspects of Islamic law so that its implementation can be optimized with the aim of a more relevant social vision. Besides that, the integration and independence of the muftis must be continuously improved so that the power does not quickly intervene in them. At the same time, the decision of the religious court/jurisprudence is also the most critical factor in the product of Islamic legal thought because in the decision of the religious court, all sources of law that have been decided by a judge in court become the following legal basis in deciding the same legal cases in the future. However, it should be understood that the essential factor for a judge in court is the quality judge because the judge who has integrity and understands the Shari'a/ Fiqh will undoubtedly determine the judge's decision that can give a sense of justice to the litigants.

Judges are the inventors of applied law born from society to produce jurisprudence that can be enforced in society. Judges must also have a high moral spirit to do what is right and uphold justice. Judges must maintain the independence that the laws and regulations have guaranteed. Thus, all decisions made by him are entirely free from influences Bustanul Arifin termed that a judge must have no superior who can rule other than his conscience and God (Arifin, 1996). A judge must be able to perform his function as a fair judge in its application. He must also be able to explore the legal values that live in society. The problem in jurisprudence is the lack of communication between judges and other judges so that the application of the product of legal thought is not applied too much. Therefore, it is necessary to make substantial efforts to create communication between fellow judges to achieve equal enforcement of the law.

Regarding the law, as the fourth product of Islamic Law thought, it seems that there are not too many obstacles to its application. It is just that the dynamics are a bit slow because making or changing a law takes a lot of time, money, and preparation. Because in the application of favorable laws, it can be accepted by the community, there is still a need for socialization of laws/rules in the community so that they obey and understand and submit and obey the laws that apply.

For Islamic law to be integrated into legislation, it is primarily determined by the thinkers and scholars involved in the legislative body. Their commitment to Islamic law can positively impact the integration of Islamic law into state legislation. This is where it takes moral courage from thinkers and scholars to voice Islam, although not literally.

CONCLUSION

The product of fiqh thought is a type of product of Islamic legal thought in Indonesia, which gave birth to various types of books that are guided in finding the law, as well as being used as a source of law, such as the book Compilation of Islamic Law (KHI) in Indonesia derived from the collective thought of the ulama, then poured in the form of a fatwa to establish the law, such as the fatwa of the Indonesian Ulema Council. The product of court decision thinking (jurisprudence) is a type of product of Islamic legal thought in Indonesia which originates from the thoughts of the panel of judges, then compiled as a court decision. The court's decision is used as a source for establishing the law, guided by the judge as a source of law, especially for new issues similar to jurisprudence. The court's decision is binding on judges and justice seekers.

The product of legal thought is a type of product of Islamic legal thought in Indonesia that comes from the thoughts of legal experts, academics, politicians, and related agencies. The

results of the legal thought are designed by the executive (government); discussed, decided, and determined by the legislature; approved by the president. The law is not immediately implemented, because it has to wait for technical instructions in the form of government regulations and ministerial decisions, now referred to as ministerial regulations. There are four products of Islamic legal thought; fiqh, fatwas, decisions of religious court judges, and legislation. In responding to this, it is necessary to understand that the fiqh applied in the social order is the rule of law that comes directly from Allah SWT., which is religious; fiqh cannot be changed but has become a stipulation. As a result, the Islamic community considers other products of Islamic legal thought unrelated to religion but something separate from religion. At the same time, the product of Islamic legal thought other than fiqh is a rule born from a mujtahid which indirectly will have legal defects in its application later.

However, it should be understood that this product of Islamic legal thought touches on the structure of Islamic society, which can be taken as strong even though it is independent of sharia law. However, it will maintain the balance of Islamic society. Thus, a solution so that the product of Islamic law can be enforced is the need for public awareness in obeying the law, either directly from God or even the rule of law from a mujtahid because a mujtahid in enforcing the law is God's intervention in his actions. Therefore, a mujtahid must be able to produce products of Islamic legal thought that can answer all the needs of the community so that it touches the sense of legal justice for the community.

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