

Sociological Considerations For Islamic Law's Application And Experience In Indonesia

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Abstract

This research intends to examine the social aspects of the implementation and enforcement of Islamic law in Indonesia. This research is qualitative in character and was conducted at a library. The study's findings demonstrate the reciprocal link between Islamic law and patterns of society behavior, with sociology serving as one method of comprehending it. In essence, Indonesian law is based on Islamic principles that evolved and changed as Indonesian society did throughout the course of its history. There are four different schools of thought that may be used to explain how Islamic law is applied in Indonesia: formalistic-legalistic, structuralistic, culturalistic, and sustainable-applicative.

Keywords : *Implementation of legislation, execution of legal regulations, study of legal systems.*

INTRODUCTION

Several legal systems in Indonesia, including Islamic law, customary law, and Western law, are of Dutch heritage. Islamic law is a legal system related to Islamic sources and teachings, which regulates not only treatment with Allah, but also treatment with other people. The practice of Islamic law in Indonesia is reflected in social practices, cultural practices, laws and

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regulations, government practices, and unwritten laws.

Law is the result of the dynamics of human life. Where there is society, there are laws. However, society continues to develop from an ancient society to an advanced modern society. Therefore, the law must always follow and control the dynamics of the development of modern society. In an advanced and modern society, law must also be advanced and modern. However, law is an intangible inanimate object that is part of human work and initiative. If the law is not changed and modernized, then the law will never be able to respond to the process of modernizing people's lives. Today, the rapid changes and developments of society demand the formation of laws that are also evolving, which can last over time, and which can meet current needs to be consistent with the events encountered.

One of Divine products that should drive the dynamics of social development and legal reform in Indonesia is Islamic Sharia law. In the midst of social pluralism in its various aspects in the life of our nation, Islamic Sharia law is expected to be able to respond to the dynamics of social development. Islamic Sharia law which contains universal values can have a positive impact if legal reform is carried out in Indonesia. However, there are still many obstacles and challenges that hinder the formulation and implementation of Islamic Sharia law, especially those who feel uncomfortable proposing the law. Islamic Sharia law is still seen as a divine product that is terrible, cruel and violates human rights, even though the facts and norms are not true. This can be proven by historical facts which show that the formation and practice of Islamic Sharia law has long historical roots.

METHODOLOGY

Contrary to the explanation above, this research was conducted to analyze the sociological aspects of the implementation and practice of Islamic law in Indonesia. This research is a library research that is qualitative in nature. Information is obtained from various sources related to the subject matter, such as magazines, scientific articles, and then explained in a story. This study uses a normative and conceptual theological approach. The purpose of this article is to examine the sociological aspects of the practice and practice of Islamic law in Indonesia and the factors that impede the practice and practice of Islamic law in Indonesia. The author provides an overview of previous research conducted by other researchers, including:

1. Journal, Agus Saron, Law Enforcement in the Perspective of Islamic Law;
2. Journal, Aris Rauf and Muhammad Sabir, Transformation of Islamic Law in the Form of Al

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Uqubah;

3. Journal, Anwar and Bukhari, Implementation of Islamic Law in Aceh in a Historical Perspective;
4. Journal, Ashadi L. Diab, Dynamics of Islamic Law Thought in Indonesia and its Challenges;
5. Journal, Muhammad Taufan Djafri, Kurniati and Misbahuddin, Sociological Considerations for the Enforcement and Practice of Islamic Law in Indonesia.

The research conducted is generally related to the development and implementation of Islamic law in Indonesia. However, the sociological definition of Islamic law and the factors that hinder the practice and implementation of Islamic law in Indonesia still require more detailed explanation.

Explain the writing methodology by describing the nature of the research, types, approaches, data sources, and data analysis techniques.

DISCUSSION

Definition of Sociology in Islamic Law The word sociology comes from two languages and two words. The first word in Latin is *socius* or *societas*, meaning friends or society, and the Greek word *logos*, meaning knowledge (Dwi, 2007) and the Greek word *logos*, meaning knowledge.(Agus, 2016)

Based on this etymological meaning, sociology can actually be interpreted narrowly as a science that studies human interaction with friends, family and society. Meanwhile, the word sociology in the Big Indonesian Dictionary is defined in terminology as a science that studies society and its changes according to the nature, behavior and development of society, as well as social structure and social processes. According to this definition, sociology is generally considered to be the study of objects, interactions, time periods or history. The definition above is a general definition or understanding of sociology in a narrower sense. Therefore, the following is an explanation of the sociology of Islamic law, the meaning of sociology in a broader sense. It claims to be comprehensive because it specifically presents the views of Islamic scholars. Definition of Sociology from the perspective of a Muslim scholar:

- a. Ibn Khaldun in his monumental work, namely *al-muqaddimah*, calls sociology the term *umrān* which means civilization. In this book, Khaldūn mentions two criteria for *umrān* (sociology), namely *ḥaḍārah* (urban civilization) and *badāwah* (inland civilization) (ibn Kandum. 2004) . Khaldūn wants to reveal that sociology is a civilized society where the stages to be passed are *badāwah* stages from the interior to the city/modern civilized society (*ḥaḍārah*).

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- b. Ali Shariati is not the same as Ibn Khaldūn, Ali Shariati got the idea of sociology from the language of the Qur'an, he got the idea of sociology as *al-Nās* or community. According to him, humans are the key factor in changing society itself. (Syariatui, 1998)
- c. Hasan Hanafi, speaking of Islamic rules, this scholar is obliged as a reference in participating in discussions regarding the sociology of Islamic rules. Hanafi's sociology is actually an Islamic thinker who has antipathy towards the arrogance of Western thinkers who are popular with their orientalism. Basically there are 3 things in Hanafi sociology, namely, first, self-behavior towards the classical tradition, namely self-enlightenment in seeing one's culture as part of the past. Second, behavior towards Western tradition, namely self-enlightenment in the eyes of other people, namely the modern West. Third, behavior towards empiricists, namely self-enlightenment regarding empiricism of life related to using oneself as well as using the West. (Hanafi, 1994).

After understanding the summary of sociology, the meaning of the sociology of Islamic law will be explained. However, before that, it will be explained in general about Islamic law. Islamic law refers to a combination of words in Indonesian, consisting of law and Islam. Furthermore, Islamic law actually comes from Arabic translations, such as shari'ah, fiqh, and *ḥukm*, as well as other terms such as *qānūn*, which appear in several texts. (swauqi, 2019)

Meanwhile, Western countries study Islamic law through translations of Islamic law terms. (Schacht, 1965) According to Schacht, Islamic law is a set of religious regulations that govern every aspect of Muslim life as commandments from God. This law includes laws of worship and ritual as well as political rules and laws in a narrower sense.

According to Bani Syarif Maula, the sociological approach to Islamic law is inconsistent with the general view that Islamic law is a perfect legal system that comes from God and is not influenced by changes in human history. Islamic law, like any other legal system, is formed through interactions between people and their social and political conditions. Therefore, the socio-historical approach is very important in studying Islamic law. (Maula, 2010) Based on the extensive exposure of experts, one general feature of the sociology of Islamic law can be identified, namely as the interrelationship between various types of Islamic law (*Syarī'ah*, *Fiqh*, *al-Ḥukm*, *Qānūn*, and the like) which is explained as one approach to understanding it. In the context of the practice of Islamic law in Indonesia, it can simply be said that Islamic law in Indonesia consists of a set of legal rules that have grown and developed in the lives of Indonesian people throughout its history. This rule comes from a

combination of normative elements (syarī'ah) which have local characteristics in all corners of Indonesia. It can be concluded that Islamic law and Islam have the same position in Indonesia. Therefore, when Indonesians say the two sentences of shahada to declare themselves as Muslims, they automatically submit themselves to the authority of Islamic law. This is known as the shahada theory or the theory of belief.

The majority of Muslims in Indonesia are committed to implementing Islamic law not only in individual life, but also in the life of the nation and state, although there are differences of opinion regarding the practice of Islamic law. There are several theories of thought regarding the practice of Islamic law (shariah) in Indonesia:

First, the formalist-legalistic theory which states that the implementation of Islamic law must be carried out through state institutions.

Second, the structuralist theory emphasizes Islamic social and political orders, while the cultural approach emphasizes Islamic social behavior.

Third, cultural theory that expects the internalization and socialization of Islamic law by Muslims themselves without direct support from political authorities and state institutions, with the aim of making Islam a source of ethics and morality, inspiration, motivation, and an additional factor in the formation of social structures. Abdurrahman Wahid is a major proponent of this cultural approach.

Fourth, ideas that are substantially implemented, which do not show advantages or disadvantages because they do not support the opinion of anyone or any political party, and only arise from a theoretical perspective of dogmatic and applied Islamic teachings. Its implementation is left to the Muslims themselves, whether it is based on state power or structural, cultural, essential, individual, or collective.

In addition to the laws that must be regulated by Islamic law specifically, such as inheritance, marriage, and buying and selling laws, there are theories related to the practice of Islamic law in Indonesia, namely:

1. The theory of the Islamic State, this theory was put forward by H.A.R. Gibb's theory states that the state must apply Islamic law as a whole and become a state based on Islamic law. This theory is widely supported by Islamic groups in Indonesia, but is considered controversial by some because it conflicts with the principle of the unitary state of the Republic of Indonesia which is based on Pancasila. Apart from this theory, there is also the Islamic Law Renewal Theory, which emphasizes the importance of developing Islamic

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law so that it can adapt to the times and the needs of society. This theory is considered as a solution to overcome the discrepancy between Islamic law and the current social and economic reality of Indonesian society.

2. Theory of Reception in Complex, Acceptance in a complex theory. Receptio Theory in Context, Acceptance in a complex theory. This theory was proposed by Mr. Lodewijk Willem Christian van den Berg (1845-1927) who argued that Islamic law fully applies to Muslims because they follow Islam, even though there are deviations in its implementation. Van den Berg is an expert in the field of Islamic law and is credited with being "the man who discovered and proved the practice of Islamic law in Indonesia", although many writers have previously addressed this topic. He also ensured that the Dutch magistrates, with the assistance of the Muslim qāḍī princes, applied Islamic inheritance and marriage laws.
3. Receptive theory, this theory was introduced by Christian Snouck Hurgronje (1857-1936) and further expanded by C. van Vollenhoven and Ter Haar Bzn. This theory asserts that indigenous peoples are basically governed by customary law; Islamic law applies when a society has adopted the norms of Islamic law as generally accepted law. This theory originates from Snouck Hurgronje's wish that the indigenous people of the colonial nations were not forced to embrace Islam directly, because people who follow Islam and Islamic law are generally not easily influenced by Western civilization.
4. Receptie Ext theory, Indonesia clearly stipulates that Islamic law applies in this country and is not based on common law. Hazairin stressed that the practice of Islamic law by the Indonesian people must be based on its own laws and regulations. Therefore, Hazairin rejects the acceptance theory as a satanic theory that is contrary to Islamic teachings, and calls those who practice it as hypocrites. Hazairin also stated that the 1945 Constitution categorically rejected the Receptie theory, especially after the Indonesian Presidential Decree was issued on 5 July 1959, which confirmed that the Jakarta Charter was a continuation of the 1945 Constitution. applicable laws and regulations.
5. Receptio a Contrario theory, is the opposite of acceptance theory. While the acceptance theory discusses the status of Islamic law in common law as primary law, the Receptio a Contrario theory reverses common law. Therefore, Sayuti Talib called his theory the theory of reciprocal acceptance.
6. The theory of eclecticism, which leans towards syncretism, places Islamic law as one of



the main components of the three basic materials of domestic law. For this raw material to be optimized, it must be integrated into national law which avoids ideological similarities in its design. However, syncretism means choosing the best domestic law, including the essence of Islamic law, which is in accordance with Indonesian national identity and nationalism. If this leads to a form called national law, then this process basically involves competition between the three (Islamic law, customary law, and Western law), in a neutral and positive sense, and not in a negative sense.

7. Theory of Existence, the theory of existence that shaped the past and future state of Indonesian domestic law, that Islamic law is contained in Indonesian domestic law and in both written and unwritten law, in various fields of life and legal practice. This theory explains the existence of Islamic sharia or Islamic sharia in Indonesian national laws and regulations, namely:

- a. Is an integral part of Indonesian domestic laws and regulations;
- b. Has an independent existence, is recognized for its existence, strength and authority in domestic law and is given domestic legal status;
- c. It is contained in domestic law in the sense that Islamic legal norms (religion) act as a filter for Indonesian national legal material;
- d. Is a very important material and the main part of the Indonesian national legislation.

Even though Islamic sharia has long historical roots and the majority of Indonesia's population is Muslim, there are still many obstacles in implementing and practicing Islamic sharia in Indonesia. Especially in the field of jinayat, Islamic law seems slow to be implemented. Topo Santoso explained that there were several factors that hindered the implementation and practice of Islamic law, including:

1. Cultural or social constraints, namely the existence of an Islamic society that still does not accept;
2. Limitation of thinking, namely the many negative views of Islamic criminal law and lack of confidence in its effectiveness;
3. Philosophical obstacles, such as accusations that laws are unjust and even cruel, out of date, and against the ideals of national law;
4. Legal limitations arising from the absence of criminal law provisions originating from Islamic law;
5. Obstacles to consolidation, namely the lack of supporters (from various groups) for



the practice of Islamic law who still emphasize the arguments and methods of its implementation;

6. Academic limitations are reflected in the still not widespread teaching of Islamic criminal law in schools or campuses;

7. The obstacle to its preparation is that there has been no attempt to systematically compile a criminal law that is in accordance with Islamic law to prepare a substitute for Western criminal law;

8. Structural limitations are seen in the absence of a legal structure that supports the implementation of Islamic law;

9. Scientific limitations; reflected in the lack of scientific literature on Islamic criminal law.

The main obstacles are political obstacles because political power is not enough to encourage the implementation of Islamic law through the political process. Understanding these things, there are obstacles to the implementation and enforcement of Islamic law, especially jinayat in Indonesia, which slow down its implementation. It is hoped that the development of Islamic law in Indonesia will continue long after the development of positive criminal law in the Dutch East Indies. The nation's founding fathers planned to introduce Islamic law in Indonesia. However, due to the diversity of the Indonesian population, this plan could not be implemented, and after that Pancasila became the basis of the Indonesian state.

The proactive adoption of religious regulations is very helpful in strengthening the country's model of law enforcement through prevention rather than prosecution. The goal is for people to understand and follow the laws and regulations of the state religion simultaneously. In this way, Islamic Sharia is not only socialized, but also implemented through preventive legal protection to overcome the weaknesses of positive criminal law.

There are several factors that become strengths in the practice of Islamic Shari'a, including:

- a) The number of adherents of Islam is quite important;
- b) The emergence of Islamic movements that always promote the implementation of Islamic law;
- c) The failure of various legal and state systems that are not based on Islam has created dissatisfaction among humans, requiring alternative choices. One option is the religion of

Islam;

- d) The successful political efforts of Islamic groups and Islamic parties in several Muslim countries;
- e) The glorious history of Muslims in the past when they applied Islamic law.

This history can at least evoke longing for adherents of Islam to return to its glory days, with the values of justice and humanity held by the people of Indonesia. Therefore, the opportunity to apply Islamic criminal law effectively in Indonesia is still wide open. With the existence of Islamic criminal law, it is hoped that it can minimize crimes that are increasingly rife in society and maintain security and order in the country. Nevertheless, it should be remembered that the practice of Islamic criminal law must be carried out wisely and in accordance with the values of justice and humanity held by the people of Indonesia.

CONCLUSION

1. The study of Sociology of Islamic Law involves a reciprocal relationship between Islamic law (Syarī'ah, Fiqh, al-Hukm, Qānūn, and the like) and patterns of societal behavior. Sociology is one approach used to understand this relationship;
2. Islamic law in Indonesia, in simple terms, can be explained as legal norms originating from Islamic law and growing in the lives of Indonesian people throughout history. There are several theories of thought regarding the practice of Islamic law in Indonesia, such as formalistic-legalistic, structuralistic, culturalistic, and substantive-alistic-applicative theories;
3. There are several obstacles in the enforcement and practice of Islamic law, especially in the field of jinayat (Islamic crime), causing Islamic law to seem slow.

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