

Post-reform Development of Islamic Law Politics in the Perspective of the Rule of Law Hans Kelsen

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ABSTRACT

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This article discusses the political development of post-reform Islamic law in the perspective of Hans Kelsen's rule of law. The purpose of writing this article is to find out the political development of Islamic law and the political correlation of Islamic law in Indonesia based on the perspective of the general theory of law and the state put forward by Hans Kelsen. The author uses a qualitative research approach with library research data collection techniques (*Library Research*), the authors take data from books, scientific journals, literature and other publications that are worthy of being used as a source for this research. Qualitative research that the authors use is research that produces information in the form of notes and descriptive data contained in the text under study. The results of the research that the authors describe in this article state that as a country with the largest Muslim population in the world, it will directly or indirectly affect the development and development of the Indonesian people's way of life. Changing regimes from time to time with different policies from one another, gave a variety of colors to the life of the nation and state. As a legal expert, Hans Kelsen expressed the connection between law, morality and religion. How does one affect one another, and what kind of relation does this have in the life of the nation and state in Indonesia.

1. Introduction

Indonesia as a country with the largest Muslim majority population in the world certainly cannot rule out the role of Islamic figures or even Muslim groups in political and legal developments in Indonesia. . However, this has never materialized even though it has been tried through legal and constitutional means. This phenomenon is considered strange by some observers because how is it possible that in a country where the majority of the population is Muslim, the idea of enforcing Islamic law has never received serious reception.

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The politics of Islamic law is a policy effort to enforce Islamic law as one of the living laws in society, namely by paying attention to aspects of diversity (plurality), and in the process of enactment it must also pay attention to or be oriented to national or national interests (integrity), meaning that all aspects are served. life without causing shock or anxiety, without coercion and still respecting essential values that contain religious characteristics. So the law that serves this interest does not have to be in the form of legal unification, but in the form of legal codification which contains legal unification, in certain areas of law and contains legal differentiation in areas of law that are very familiar with religious beliefs.

Even though the majority of the population embraces Islam, many factors make it difficult for Islamic law to develop as a legal basis for a country. The political reality in Indonesia, which is constitutionally not an Islamic state, but rather a Pancasila state, makes it impossible for Islamic institutions to fully realize Islamic principles of law, especially in its official for

The link between politics and Islamic law for the people of Indonesia has been going on since the days of the kingdoms in the archipelago which were still standing where some of the kingdoms that existed at that time were Islamic kingdoms where the dominant implementation of law and governance was based on Islamic law. The development of Islamic politics and law experienced ups and downs from time to time. If we look at the historical roots of Islamic law in the archipelago, it started from the first century of Hijri or around the seventh and eighth centuries AD.

Islam began to appear and develop rapidly in the archipelago and was even partially able to replace the role of the Hindu-Buddhist kingdoms that existed long before the people in the archipelago knew Islam. During the Dutch colonial era, Islam still had an influence on the application of law in the colonies in the archipelago, this was done because quantitatively the existence of Muslims could not be ruled out and the interests that arose in their daily lives had to be accommodated. The Batavia Statute established in 1642 by VOC, stated that inheritance disputes between indigenous people who are Muslim must be resolved using Islamic law, namely the law used by the people every day.

In pre-independence, many Muslim figures and scholars participated in the process of resistance against Dutch colonialism in Indonesia, so that in the post-independence period these figures had strategic roles and positions in government which became the entry point for Islamic thoughts within the framework of the Republican Unitary State. Indonesia. Islamic law is a binding law for those who wish to bind themselves to that law based on belief in Allah and the Prophet Muhammad, so that the limitations on the application of Islamic law are not based on territorial boundaries or the form of government of a country. Indonesia is a constitutional state that focuses on the existing legal system in a country, and the legal system used in Indonesia is *civil law* with the characteristics of a codification system, judges are not bound by precedent or doctrine *to stand ten thousand*, so that the law becomes the main reference, and the judiciary is inquisitive⁶, thus for Islamic law to become a positive law in Indonesia, Islamic law must be able to transform from religious law to national law. To reach this stage the role of legal politics, especially politics Islamic law is important in making Islamic law a positive law that applies nationally and can have certainty and binding power for adherents of Islam in Indonesia.

Hans Kelsen says: "*according to the nature of basic norm, we may distinguish between two different type of order or normative system: static and dynamic system*". It would be interesting to discuss whether the enactment of Islamic law is a static or dynamic law or it can even become a law that is sometimes static but can also be dynamic, with the development of the times and changes in patterns and human behavior from time to time, can Islamic law maintain its existence and adjust with what is happening in the present and in the future along with the legal political dynamics that arise in the process.

2. Library Survey

In the concept of Islam, which is adhered to by Muslims in Indonesia between religion, law and the state is something that cannot be easily separated from one another. With the largest Muslim population in the world, it will certainly be difficult to rule out the role of Islam in the formation of law and the daily life of the state in Indonesia. Historically, among the three elements above, Islam is the last thing to appear both in Indonesia and in the world. To see the relationship between the state and Islam began at the time of the Prophet Muhammad SAW. For about 13 years in Mecca, the Prophet Muhammad

and the Muslims did not yet have the power and political unity to control an area. This was influenced by the relatively small number of Muslim followers at that time and the pattern of the Prophet's preaching which was still closed. Islam began to be familiar with the concept of the state when he migrated from Mecca to Yathrib or Medina in 622 AD. If previously they were weak and oppressed people in Mecca, then in Medina they had a good position, were strong and could stand on their own. The initiative of the Prophet Muhammad in organizing and uniting his followers and other groups, into an orderly, independent and sovereign society which eventually became a state under the leadership of the Prophet Muhammad himself is the practice of *siyasa*, namely the process and goals to achieve goals.

Hans Kelsen's general theory of law and the state also discusses law, morality and religion. Both law and religion have the goal of order, obedience to the rules made by the state as well as obedience to religion, and the state can become a facilitator so that these two goals can work together and be in accordance with the goals of the state. Perhaps religious norms are more effective than legal norms because their enforcement requires belief in the existence and power of authority over humans. So the problem is not so much the effectiveness of sanctions, but only whether and how they are determined by social order. So that religion can be a means for the state to be able to maximize the effectiveness of law, thus public awareness in acting according to law is not only valuable as obedience to state orders, but can also be interpreted as a form of obedience in carrying out religious orders.

The political development of Islamic law, which has continued to develop from time to time, is currently facing a new problem, namely secularism. According to Dr. Syamsudin Arif secularism is a thought, ideas and ideas that separate religion from worldly affairs. Religion is considered only limited to the affairs of worship, religion should not interfere in worldly affairs. The spread of adherents of secularism in Indonesia is certainly not good news for Muslim groups in Indonesia, because this understanding is clearly not in line with the struggle to legalize positive Islamic teachings into laws or at least every legislation that is formed takes sources from Islamic thoughts. either in part or for the whole.

In some cases the state and law can take many positive things from Islamic legal positivism, such as the phenomenon of *muzakki* or people who pay *zakat* who tend to be more honest in reporting their assets than when they report their income for tax purposes. Awareness of human beings who are religious tends to be more effective in law enforcement than awareness as human beings with a state, this should be a value that must be continuously explored and developed when Islam, law and the state are in balance.

3. Methodology

This research is library research, the data collection technique used in this research is library research (*Library Research*) where the literature study is the activity of collecting materials related to research originating from books, scientific journals, literature and other publications that are worthy of being used as a source for research that will be examined by the author by describing and describing the data is through some expert opinion. This study uses a qualitative research approach, namely research that produces information in the form of notes and descriptive data contained in the text under study.

4. Results and Discussion

4.1 State, Law and Islam

In the concept of Islam, which is adhered to by Muslims in Indonesia between religion, law and the state is something that cannot be easily separated from one another. With the largest Muslim population in the world, it will certainly be difficult to rule out the role of Islam in the formation of law and the daily life of the state in Indonesia. Historically, among the three elements above, Islam is the last thing to appear both in Indonesia and in the world. To see the relationship between the state and Islam began at the time of the Prophet Muhammad SAW. For about 13 years in Mecca, the Prophet Muhammad and the Muslims did not yet have the power and political unity to control an area. This was influenced by the relatively small number of Muslim followers at that time and the pattern of the Prophet's preaching which was still closed. Islam began to be familiar with the concept of the state when he migrated from Mecca to Yathrib or Medina in 622 AD. If previously they were weak

and oppressed people in Mecca, then in Medina they had a good position, were strong and could stand on their own.

Along with the time and in line with the increase of the followers of Islam in Madinah, it was felt that there was a need for a rule to regulate how society should live and the creation of a good governance of life among the people of Madinah and at that moment Islam began to enter into the rules of the state. During the time of the Prophet Muhammad, the country did not yet know institutions such as the executive, legislature and judiciary, which existed at that time was the Prophet Muhammad himself as a superior institution that had the function of executive as the leader of the Muslim community, as a legislature because what the Prophet did and said was guidance and reference for Muslims as well as judiciary in the event of a violation of what has been said by Allah SWT. What Islam did at that time was in line with what was said *coercive order* which means a social order that requires certain individual behavior and is carried out by establishing it as a coercive order.

The initiative of the Prophet Muhammad in organizing and uniting his followers and other groups, into an orderly, independent and sovereign society which eventually became a state under the leadership of the Prophet Muhammad himself is the practice of *siyasa*, namely the process and goals to achieve goals. These rules and provisions are the Medina Charter which is the initial constitution of an Islamic state which regulates how to form a harmonious society consisting of various ethnic groups in Medina and the religions that existed at that time. The Medina Charter not only regulates the internal governance of Medina, but also regulates the relationship between Medina and countries outside Medina to establish communication so as not to join forces with the Quraysh to attack Medina. The existence of the Medina Charter has shown that the concepts of statehood in Islam have existed for a long time and were led directly by the Prophet Muhammad, this is also in line with the legal rules made by the Prophet Muhammad as the superior organ of the state so that thus the correlation between the state, Law and religion are not foreign to Islam. In Islamic theology it is very clear that the issues of worship, life and death of a person including discussing constitutional issues are an integral part of Islamic teachings.

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4.2 Law and Islam in Indonesia

Law, Islam and the state should be a knot that binds and strengthens one another as described above. The Qur'an and hadith only contain normative prepositions about Islamic politics and the relationship between humans as individuals and certain social communities. As a country where almost all of its citizens have a religion or belief system, this is certainly a problem in itself for the Indonesian nation, starting from how to create and form a good legal system that is able to protect and accommodate all groups without discrediting other groups, to how how to accommodate the majority group or group who want to bind themselves and their group in order to gain legitimacy from the state and other things that become the burden and responsibility of the state so that everything can run in harmony and as it should.

There are many problems that arise when the three elements of law, state and religion try to dominate over the others. In the Indonesian concept, the role of Islam for the other two elements has ups and downs depending on who is in charge and what political interests will be promoted. Religion is often used as a political commodity ahead of general and regional

elections, things like this will gradually become unsettling and will have an impact on divisions in society. One of the reform figures in Indonesia Amien Rais said "If religious expressions and symbols are used to increase political support, religion will become an issue that divides Muslims, and sensitive principles and beliefs that may not be negotiable will burden politics. election"

Such a phenomenon is still going on until now and has even been used as a quite successful way to win the sympathy of the people. The common thing to do is to use certain religious attributes in the hope of being able to enter into the group and get more sympathy, and keep going from one place to another. election to another.

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5. Conclusion

Islam developed very rapidly from its inception until now, Islam at the time of the Prophet Muhammad was not limited to matters relating to worship but also as a political and economic standard for a country which at that time was led directly by the Prophet Muhammad. The development of Islam in Indonesia, although it has experienced ups and downs, has had a significant impact from time to time. Until now, various kinds of problems have been faced by the political development of Islamic law, ranging from pressure from the government to the notion of secularism which continues to be developed by elites. The truth is that Islam, the state and law can work in balance without anyone dominating one another, and Islam itself does not conflict with the philosophy of Pancasila, the 1945 Constitution and the spirit of democratization in Indonesia.

Sectoral egos from several circles and groups become obstacles to development, be it the development of law, state or religion. In this case all elements must think openly and accept whatever is good for law enforcement and the life of the nation and state. It is very difficult to repeat the concept of Islam, as it did in the time of the Prophet Muhammad, because the Prophet is the leader as well as the legislator and delegate of the laws that Allah gave in the form of words. Thoughts to make Indonesia a state based on Islamic law are very difficult, because of the homogeneity of its citizens, but taking some important points from Islam as a basis or thought in forming a law and regulation is not something that is difficult to implement, as long as it runs proportionally. and in accordance with Indonesian principles.

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