The Easta Journal Law and Human Rights
Vol. 1, No. 03, June, pp. 93 - 98
ISSN: 2985-7112, DOI: 10.58812/eslhr.v1.i03

The Contextualization of The Teachings of Islamic Law in The Legal World in Indonesia

Muhammadong
State University of Makassar

Article Info

Article history:

Received Jun, 2023
Revised Jun, 2023
Accepted Jun, 2023

Keywords:

Contextualization
Islamic law
Legal Politics

ABSTRACT

The purpose of this research is to find out the contextualization of the teachings of Islamic law within the framework of legal politics in Indonesia. The existence of Islamic law did not only apply during the colonial period but could exist in the national legal system. The contribution of Islamic law is very large for the progress of the development of Islamic teachings in Indonesia. Birth of Law No. I of 1974 concerning Marriage, Law No.7 of 1989 concerning Religious Courts. The Compilation of Islamic Law (KHI), and PP No. 28 of 1978 concerning waqf, show that Islamic law is a teaching in the legal system in Indonesia. Islamic law is believed to be a teaching that can bring about changes in the way of life of Muslims.

Corresponding Author:

Name: Muhammadong
Institution: Universita Negeri Makassar
Email: muhammadong@unm.ac.id

1. INTRODUCTION

Muslims in Indonesia are an absolute part of the entire Indonesian people, in fact they are the largest part of the Indonesian nation with a population of more than 275 million. And it is a fact in the history of the Indonesian nation that long before the Dutch colonialists established their power in Indonesia. Islamic law as a law that stands alone has become a reality in a society that is constantly growing and developing. This is evident that the Islamic kingdoms that once existed in Indonesia practiced the teachings of Islamic law in their respective territories.

Islamic law has existed in the islands since Muslims came and settled in this archipelago, namely in 1345 AD (XVI century). But in the course of its history there have been many obstacles and obstacles. This is caused by many parties worrying if Islamic law is truly upheld. This concern was especially felt by the Dutch colonialists after they colonized Indonesia. The Dutch colonial government saw Islamic law as a potential that could hinder its political interests [1].

Therefore, in the Dutch legal political system, Islamic law is always endeavored to keep away from its adherents. It seems that the Dutch colonial effort to separate Muslims from their religious laws reached a bright spot after Snouck Hougranje launched his legal political attack through reception theory so that at that time the provisions of Islamic law were doubtful and became unclear.

From the historical paradigm of Indonesian Muslims it is known that Islamic law as a living law and adhered to by the majority of the Indonesian population has always received legitimacy both during the

Dutch colonial period and during the independence period. This means that Islamic law cannot be eliminated from the Indonesian archipelago, even though it is constantly being castrated and marginalized so that its provisions do not find a place on Indonesian soil [2].

Since the arrival of Islam in Indonesia, Islamic law has always developed in the socio-cultural life of the community and the legal behavior of the community because it is considered a part of life. Moreover, at that time the people really craved the desire to practice religion through the provisions of Islamic law. That is why, Islamic law has been accepted as normal law which is culturally believed to be one part of the whole Islamic teachings, which must be obeyed and practiced in daily life [3].

Thus, Islamic law has a strong and recognized position in society, both those living in society and in statutory regulations. At the time of the Islamic kingdoms in the archipelago, Islamic law had been in effect as state law, although not in its entirety due to the strict rules of the Netherlands. This can be seen from several kingdoms in the archipelago whose governments were controlled by kings who were Muslim and imposed Islamic law in running their government. Like the Islamic empire in Aceh which began with the founding of the Samudera Pasai kingdom whose government was centered in Kota Raja until the arrival of the Dutch government. On the island of Java, the Mataram kingdom was known which ruled Islamic law, the Islamic kingdoms in Banjarmasin, the Sultanate of Demak, Cirebon and others.

With the enactment and implementation of Islamic law in the region, it greatly influences the form of society and the legal behavior of society and the Indonesian legal system because of the public interest in wanting to return to their religious teachings. In turn, it forms public awareness of the law it mandates. For example, the Sultan of Aceh in forming social uniqueness, especially Aceh in the field of understanding and practice of state administration, was heavily influenced by the book al Ahkam al Sulthaniyah (a well-known book from the Shafi'i school), as well as Sultan Agung (king of Mataram) in laying down his political foundations strongly supports the enactment of Islamic law.

Thus, it can be said that Islamic law can be accepted as law in Indonesia even though in its journey it has not run optimally let alone become permanent law because of the strong influence of the Netherlands to develop its mission. It's just that Islamic law has become the idol of society to strengthen its provisions in religion, even becoming political law in the framework of law-making in Indonesia.

2. METHODS

This research is a descriptive analysis research. This type of research is normative juridical, by way of review and analysis of secondary data sources in the form of literature studies related to Islamic law with normative analysis, based on the theme studied. Data analysis used was descriptive qualitative analysis, researching and presenting materials descriptively was then analyzed to obtain data that was in line with the research focus.

3. RESULTS AND DISCUSSION

3.1 Islamic Law in Colonial Period

At the beginning of the Dutch colonial occupation of the Indonesian Archipelago, Islamic law was still recognized as the applicable law in society. It was even included in state legislation through article 75 paragraph 3 of the Dutch East Indies constitutional law called Regrening Regulation (RR) and subsequently published in Stbl./1885 No.2. On this basis, in 1882 the Dutch East Indies government established a Religious Court through Stbl.1882 No. 152 whose job is to settle cases by applying Islamic law in the event of a dispute between all Indonesians or people who are equated with Indonesians. The

legitimacy of the enactment of Islamic law at that time was based on Article 78 paragraph 2 of the Regulating Regulation (RR) which reads "That in the event of a civil action between all native Indonesians or people who are equal to them, then they are subject to the decisions of religious judges or the provisions of their religion [4].

This situation then changed after the Dutch colonial launched its legal politics. Efforts to weaken and kill Islamic law were increasingly felt after the arrival of Snouck Horgronye. Snouck Horgronye succeeded in amending article 134 paragraph 2 Indische staatsregeling (IS) as a substitute for article 78 paragraph 2 RR contained in the Stbl. 1929 No. 212 article 134 paragraph 2 which reads: In the event of a civil case between fellow Muslims it will be resolved by a Muslim religious judge, if this condition has been accepted by their customary law and as long as it is not otherwise determined by the ordonantie. Since then, Islamic law has been declared as part of customary law, although the term customary law was only introduced by Snouck Horgronye in 1903 [5].

Changes to the Indonesian legal system, which concern the fate of Islamic law, occurred 16 years before independence, but it seems as if these changes have taken place since the issuance of the RR in 1855, this cannot be separated from the efforts of Prof. C.V. Vollen Hoven. Even this change was then emphasized by limiting authority. Religious Courts in Java and Madura through Stb. 1937 No. 116 by adding a new article to Stb. 1882 No. 152, namely article 2 which states that the Religious Courts are solely authorized to resolve cases concerning marriage, thalak, Ruju' and divorce between people who are Muslim, even property claims are only permitted regarding dowry and maintenance.

3.2 Islamic Law in the Age of Independence

On June 25, 1945 there was a national consensus which was poured into the Jakarta charter which was later accepted by the Indonesian Independence Preparatory Investigation Agency (BPUPKI) as the preamble to the state law to be formed. Where the principles of the state are listed, among other things, it is stated that "The state is based on divinity with the obligation to carry out Islamic Shari'ah for its adherents". Then the last seven words by the Preparatory Committee for Indonesian Independence (PPKI) were replaced with the words "The Almighty" and further this principle was emphasized in the body of the Constitution article 29 paragraph 1 which reads "The state is based on Belief in the One and Only God".

As a reward for changing the seven words into three words, the Department of Religion was established on January 3, 1946, one of whose duties was to oversee the Religious Courts. The existence of the Religious Courts as the institution for the enforcement of Islamic law, even if only in certain fields, automatically shows that Islamic law still exists in its existence. The existence of the Islamic law enforcement institution is maintained through Emergency Law No. 1 of 1951 was later supplemented by government regulation no. 45 of 1957 concerning Religious Courts or Syari'ah Courts outside Java and Madura. Furthermore, the existence of the Religious Courts as an Islamic legal institution is stipulated by Law no. 7 of 1989 concerning the Religious Courts.

Efforts to stabilize the existence of Islamic law institutionally continued to be increased, so that in 1991 the Presidential Instruction No. RI was issued. 1 of 1991 and its implementing regulations by the Decree of the Minister of Religion of the Republic of Indonesia No. 154 of 1991. With the issuance of the Presidential Instruction and its implementing regulations by the Minister of Religion,

the implementation of Islamic law in Indonesia entered a new era. -famous book of fiqh [6].

After Indonesia's independence was proclaimed and the 1945 Constitution was enacted, even though it did not contain the seven words in the Jakarta charter, Islamic Law returned to exist in state legislation. reception becomes invalid. That means the reception theory discrediting Islamic law has lost its legal basis [7].

3.3 Islamic Law in the Context of Legal Politics in Indonesia

If one traces the history of legal politics in Indonesia from the Dutch colonial education until the Indonesian nation proclaimed its independence, it can be divided into two periods, namely the Dutch colonial period. the application of Islamic law to Muslims because they embrace Islam. According to this theory, the law that had been in force since the existence of the Islamic empire in the archipelago until the VOC era was Islamic family law, especially marriage law and inheritance law, which was still recognized by the Dutch. Even more than that, the Dutch East Indies government recognized Islamic law in a formal juridical manner in the form of the resolutie der indische regeering regulation dated May 25, 1760 which was later given a legal basis in the Regeering Reglement (RR) [8].

Second, the period of acceptance of Islamic law by customary law, then called reception theory (reseptie). In this theory, Islamic law can be enforced if it does not conflict with customary law. What can be understood from this theory is that Islamic law, by the Dutch East Indies, was not recognized as a living and independent law. It is not an exaggeration to say that in the application of this theory Islamic law is in its absence. As with the theory of receptio in complexu, this theory of reception was given a legal basis in the Indische Staatsregering (IS) Dutch East Indies constitution and at the same time replaced the previous law (RR).

In the era of independence and the colonial era, Islamic law has gone through two periods, namely, first the period of acceptance of Islamic law as a persuasive source. That is, as a source of law, it will only be accepted if it is believed by the community and gains legitimacy. In the context of Islamic law as a persuasive source. The Jakarta Charter as one of the outcomes of the Indonesian Independence Preparatory Investigation Agency (BPUPKI) meeting is very significant. And then it became the grondwell-interpretatie of the 1945 Constitution for 14 years, namely June 22, 1945 when the gentlement regulation was signed between the Islamic nationalist leaders and the secular nationalists until June 5, 1959 before the Presidential Decree was promulgated [9].

At the time, Islamic law was accepted as a source of law that had legal force (law force) in the state legal system which began after it was placed in the Republic of Indonesia's Presidential Decree on July 5, 1959. June 22, 1945 tightened the 1945 Constitution and was a unitary summary in the constitution.

The dimension that can be understood means "animating" that is not meant to make laws and regulations within the Republic of Indonesia which are state-organized with Islamic law. And it can also be understood that followers of Islam are required to carry out Islamic law based on beliefs and beliefs according to the interpretation that is developing. Besides that, another dimension that can be understood from the word "animating" is that Islamic law has been recognized in the national legal system and functions as a filter for legal materials in Indonesia [10].

3.4 Contextualization of the Teachings of Islamic Law in the National Legal System.

Islamic law is not merely a legal product developed by Muslims but has become a teaching that must be implemented in their lives. In the history of the growth and development of Indonesian law, the reality of community law shows that Islamic law applies and has a strong position in the national legal system.

In the Indonesian context, it has become a teaching that applies in society, among other things, Islamic law has become a teaching in Islam in managing law, Islamic law has become a theory of acceptance of legal authority, Islamic law has become eori receptie in compiexu, Islamic law has become a theory of receptie, and Islamic law became a receptie exit theory, and Islamic law became a contraria theory.

It is impossible for Indonesian National Law to ignore Islamic law because the Indonesian state is a state based on Pancasila and the 1945 Constitution which accommodates Indonesian national values which cannot be separated from Religion and Religious Law. Even religious laws have contributed a lot to the formation and development of national law. Islamic law has been accommodated in national law in various state laws and regulations, for example Law no. 22/1946 jo, UU no. 32/1954 concerning the recording of NTR which is based on the munakahal law of Law no. 1/1974 concerning marriage, Law No.. 14/1970 regarding the main points of judicial power as stated in Law no. 3/1960 concerning the subject of agrarian affairs which places religious (Islamic) law as a consideration in determining the law [11].

The phenomenon that occurs in Islamic law shows the framework of national legislation by looking at legal reality in society, especially regarding the experience and implementation of Islamic law. So it can be understood that Islamic law is a living law and has a close relationship with national law [12].

Thus, the contextualization of the teachings of Islamic law occupies a very important position. This is based on the fact that the contents of Islamic law are a relation of values that are believed by the community as an institution of social life within the framework of the nation and state. Islamic law is a norm that develops dynamically and applies based on the needs of the community in carrying out religious teachings based on prevailing conditions. This is in accordance with the rules of fiqhiyah which say الاسلا م صالح لكل زمان ومكا ن (contextualization of the teachings of Islamic law can be according to time and place).

The arguments put forward above show that Islamic law in Indonesia is very familiar with the existence theory, this theory formulates the existence of Islamic law and the Indonesian national legal system. This theory asserts that Islamic law already has a quite existential and potential presence in the national legal system, both in theoretical law and in the context of law enforcement.

The assumptions developed in realizing legal contextualization are that Islamic law exists in the sense of being an integral part of Indonesian national law, Islamic law exists in the sense of its independence which is recognized for its strength and authority by national law and is given status as national law, Islamic law exists in national law. national law, in the sense that Islamic legal norms as religious teachings function as a filter for Indonesian national legal materials, Islamic law exists in national law in the sense that it is the main material and main basis of Indonesian national law, Islamic law exists in its capacity as the main element in fostering national law maximally so that it can reduce or even replace the laws of Dutch colonial

products that exist in the national legal system [13].

Efforts to apply Islamic law in national law are very wide open because the material of Islamic law applies without formal rules (legitimacy of state law) such as laws relating to prayer. Islamic law material applies because it is supported by administrative regulations such as law on zakat, pilgrimage and muamalah. Islamic law material has been integrated into state laws and applies nationally, such as formal law and the principles of marriage law [14].

4. CONCLUSION

Islamic law during the Islamic empire experienced good growth and development and had an important position, even kings who were Muslim used Islamic law in carrying out their government, even though not formally juridical, Islamic law. the theory of receptie in complexu and the disadvantageous period, namely the enactment of the receptic theory). After Indonesia's independence, the existence of Islamic law still received recognition in the basis of the state. Even if the seven words in the Jakarta charter are crossed out, it does not mean that Islamic law does not have a position in the legal political system in Indonesia.

ACKNOWLEDGEMENTS

We are grateful for the opportunity to undertake this research and for the support received from all individuals involved. This article would not have been possible without your invaluable contributions. Thank you all for your significant role in the completion of this work.

REFERENCES

[1] R. Djatnika, *Hukum Islam Di Indonesia Perkembangan dan Pembentukan*, II. Bandung: PT. Remaja Randdukarya, 1994.
[2] M. B. Hooker, "Introduction: Islamic Law in South-East Asia," *Stud. Islam.*, vol. 10, Jan. 2002, doi: 10.15408/sdi.v10i1.636.
[3] S. Sapriadi, H. Arhan, A. Alauddin, and S. Nur Zihrana, "Sistematika Hukum Islam Di Indonesia," *J. Al-Ahkam J. Huk. Pidana Islam*, vol. 4, no. 2, pp. 150–159, 2022, doi: 10.47435/al-ahkam.v4i2.1216.
[4] M. Cammack and R. M. Feener, "The Islamic Legal System in Indonesia," *Islam. Law Pract.*, Dec. 2011.
[5] A. A. Dahlan, *Ensiklopedi Hukum Islam*, 3rd ed. Jakarta: Ichtiar Baru Van Hoeve, 1996.
[6] Abdurrahman, *Kompilasi Hukum Islam di Indonesia*. Jakarta: Akademika Pressindo, 1992.
[7] A. M. Siroj, "Eksistensi Hukum Islam dan Prospeknya di Indonesia," *AT-TURAS J. Stud. Keislam.*, vol. 5, no. 1, pp. 97–122, 2018, doi: 10.33650/at-turas.v5i1.326.
[8] A. Rafiq, *Hukum Islam Di Indonesia*. Jakarta: Raja Grafinfo Persada, 1995.
[9] A. Y. Mu'alim, *Konfigurasi Pemikiran Hukum Islam*. Yogyakarta: UII Press, 2001.
[10] A. S. Ahmad, *Dimensi Hukum Islam Dalam Sistem Hukum Nasional*, 1st ed. Jakarta: Gema Islam Press, 1996.
[11] Y. Harahab, "Kompilasi Hukum Islam Dalam Perpektif Hukum Perundang-Undangan," *J. Mimb. Huk.*, vol. 22, no. 3, 2010.
[12] S. HS, *Perkembangan Teori dalam Ilmu Hukum*. Jakarta: Raja Grafindo Persada, 2010.
[13] S. M. Utama, "Eksistensi Hukum Islam Dalam Peraturan Perundang-undangan di Indonesia," *J. Wawasan Yuridika*, vol. 2, no. 1, p. 58, 2018, doi: 10.25072/jwy.v2i1.166.
[14] M. D. Ali, *Asas-Asas Hukum Islam, Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*. Jakarta: Rajawali Pers, 1990.