

KURIOSITAS

Media Komunikasi Sosial dan Keagamaan

Volume 16

No.2, Desember 2023

Halaman 142-152

The Concept of Islamic Law in Building Stability and Social

Sunuwati

IAIN Parepare

sunuwati@iainpare.ac.id

Saudi

Perguruan Tinggi Islam Darul Ma'Arif Thailand

sauditayeh12@gmail.com

Luthfiah

Universitas Al Azhar Cairo Mesir

lutfiahazizahzulkarnain@gmail.com

Kurniati

UIN Alauddin Makassar

kurniati@uin-alauddin.ac.id

Achmad Musyahid

UIN Alauddin Makassar

achmad.musyahid@uin-alauddin.ac.id

Abstract:

Sharia, a system of laws in force for millennia, contrasts with jurisprudence, which delineates the specific formulation of Islamic Law applicable to individual cases at particular times and places. Though distinguishable, they remain inseparable. To address potential confusion surrounding Islamic Law's meaning, scholars propose that its definition evolves through mujtahids' teaching, interpretation, or thought processes. This study utilizes qualitative descriptive methods, employing interviews, observations, and documentation for data collection. The study's methodology involves data gathering, reduction, presentation, and conclusion. The findings suggest that when Islamic Law becomes vital for societal stability, alterations to it may prompt social transformation. The essence and objective of Islamic Law manifest in the legal transformations it has initiated.

Keyword: Halal certification; halal industry, industry development; contribution, consumer trust.

INTRODUCTION

Utrecht delineates the structure of societal order as regulated by a set of laws comprising directives and restrictions that necessitate compliance within the community. Consequently, infringements of these laws may prompt the initiation of legal proceedings by the government or ruling authority. Legal frameworks are devised in consideration of societal requisites; hence, they ought to align with prevailing social progressions. As binding and coercive entities, these laws dictate compliance, mandating the community's adherence to established regulations.

Both static and dynamic elements are included in Islamic Law. Something static continues to be founded on the Qur'an and hadith in all facets of life. Dynamic refers to having the capacity to address all issues, to change with the times, locations, and circumstances, and to be fit for placement in all types of social structures of existence, both privately and collectively in society.

At first glance, if one occasionally examines the thought of Islamic Law, various thought patterns often intersect and contradict each other between one mujtahid and another. Based on this, Muslims should not be surprised at all kinds of differences. They think Muslims also do not need to be passionate about each other and claim that one group with specific ideas is the most correct among others because this can only cause destruction, blasphemy, and prolonged hostility, which may later have an impact on blasphemy against Islam itself.

The pattern of Islamic Law thought from time to time cannot be separated from figures or thinkers who lived in their time and environment and played a role in coloring the diversity of Islamic Law thought patterns. (Sarmadi, 2012)

The status of Islamic Law in the National Law system will be the topic of discussion regarding Islamic Law in Indonesian society. Due to its historical growth, the Indonesian legal system is multiple. They are so named because Indonesia has previously had various legal systems, each with unique configurations and arrangements. The legal framework consists of the Western legal framework, the Islamic legal framework, and the customary legal framework. The Islamic legal system has been used and evolved in Islamic culture and courts since Islam first appeared in the seventh century AD. Hamka presented the data from numerous works by specialists in Indonesian Islamic Law. As an illustration, consider Shainat al-Hukm, Shirat al-Thullab, Shirat al-Mustaqim, Sabil al-Muhtadin, Kartagama, and others (Hamka, 2021). Although all of these texts continue to discuss fiqh, they nevertheless adhere to legal theories, and the Indonesian fiqh system is still based on the Imam School's teachings.

Religious courts were explicitly established during the time of the Islamic sultanates and kingdoms. The court of the ruler does exist, for example, in Java. Shar'iyah Court of the Sumatran Islamic Sultanate. In the Pontianak and Banjar

Sultanates, there are qadi courts. However, regrettably, there had never been a comprehensively helpful law book despite the formal existence of religious courts under the Sultanate and the prominence of scholars who served as consultants and judges. The Law used is nonetheless an abstraction from the fiqh doctrine's content. The Compendium Freijer, which the VOC commissioned D.W. Freijer to create, was not completed until 1760. This collection was a legal guide for settling conflicts amongst Islamic community members in territories under VOC authority. The Freijer Compendium received only brief utilization before the VOC ceded authority to the Dutch East Indies Government in 1800. The compendium also disappeared and sank with it. New legal politics emerged based on the reception theory or conflict theory of Snouck Hurgronje and van Vollenhoven (Octavia, 2020). Since that time, the guard of Islamic Law has been penciled in. Customary legislation was applied and displayed in its position.

The Dutch East Indies administration tried to impose only two legal systems: Western Law for Europeans and Bumiputera Customary Law for other ethnicities. The 1937 Staatsblad No. 116 set down the last prohibition on coercive measures to abolish the application of Islamic Law. The Ter Haar Commission's efforts led to the creation of this regulation, which includes the following recommendations: (1) Society still needs to embrace Islamic inheritance lawfully. (2) Transfer the decision-making power over inheritance disputes from the Religious Court (Raad Agama) to the Landraad. (3) Landraad is in charge of overseeing religious tribunals. (4) The chairman of the Landraad must give his or her executor's approval before a religious court's ruling may be carried out (M. Yahya Harahap, 2019). All Dutch government regulations based on the reception theory are no longer applicable because his soul conflicted with the 1945 Constitution, despite the transitional rules stating that the old Law remained in effect as long as it did not conflict with his soul. This is because Indonesia gained independence. We must abandon the doctrine of reception because it conflicts with the Qur'an and the Messenger's sunnah. (Ichtijanto, 2019). The Devil's theory, according to Hazairin, is the reception theory.

Islamic Law must deal with the complexity of societal issues continually shifting due to changes in time and place during growth, development, and advancement. Islamic Law is challenged by social change, which necessitates flexibility because change is seen as pure, holy, eternal, and therefore unchanged. Examining how necessary social change interacts with transcendent and theoretically unchanging Islamic Law is undoubtedly fascinating. The dilemma of whether Islamic Law, which has sacred features like God's Law, must follow every social dynamic and change or whether social change must come first and adapt to

Islamic Law becomes crucial. This essay attempts to investigate the impact of Islamic Law on Indonesia's changing and stable society.

The design of this study is a case study, and it is qualitative research that employs a descriptive approach methodology. The postpositivist concept is the foundation of the qualitative research method, which analyzes subjects in their natural environments. The focus of qualitative research is on the pursuit of meaning, concepts, understandings, and qualities, as well as descriptions of a natural and comprehensive phenomenon.(Johan Nasution, 2018) Qualitative research has the following characteristics: data is obtained organically, and researchers are fundamental to the study tools. Data is gathered descriptively using observation and interview methods. According to the above description of qualitative research, this study employs descriptive qualitative research, which was selected to be simpler to describe and find facts in the field.

RESULTS OF DISCUSSION

The Concept of Islamic Law in Realizing Community Stability

The birth of laws and regulations on marriage (Law No. 1 of 1974), marriage and divorce permit for civil servants (PP No. 10 of 1983), regulations on the wakafan of owned land (PP No. 28 of 1977), and the Compilation of Islamic Law (KHI) in Indonesia are dynamics of renewal of Islamic legal thought that should be appreciated and grateful. The end of 1989 was also followed by the birth of Law No. 7 of 1989 concerning Religious Courts. In the end, after a long debate, on June 10, 1991, the President of the Republic of Indonesia issued Presidential Instruction No. 1 of 1991 about KHI (Ahmad Rofiq, 2022). Disseminate IHL to all heads of the court.

Religion and the Chief Justice of the High Court of Religion are based on Presidential Instruction No. 1 of 1991. At that time, formally and de jure, KHI was enacted as a material law for religious courts throughout Indonesia. The dissemination of IHL was carried out using the Circular Letter of the Director of Development of the Islamic Religious Court Board No. 3694 / EV / HK.033 / AZ / 91 dated July 25, 1991, which was sent to all Chairmen of High Religious Courts and Heads of Religious Courts throughout Indonesia. Thus, the provisions of the above Law apply as a whole in regulating matters of marriage, wakafan, and inheritance for Muslims in Indonesia in particular and Indonesian citizens in general (Najih, 2021).

The change of Islamic Law from classical times to contemporary times, in line with the rules of fiqhiiyyah: *la yunkar taghayyur al-ahkam bi taghayyur al-azman* (It is undeniable that the change of Law is due to changing times). Even Ibn Qayyim al-Jawziah made a rule of jurisprudence which reads: *Taghayyur al-fatwa*

bi taghayyur al-zaman wa al-makan wa al-ahwal wa al-'adah (The change of fatwa because of changing time, place, condition / intention and custom) (Azhari, 2016). Different perspectives and interpretations in the diversity of Muslims' understanding of the nature of Islamic Law have implications in their point of application.(Rhamadhan & Utami, 2022) M. Atho Mudzhar explained the different perspectives in the field of Islamic legal thought, which were divided into four types: books of jurisprudence, decisions of religious courts, laws in Muslim countries, and fatwas of scholars.(Mudzhar, 2019)

The concept of legal change brought about by Islamic Law reflects the purpose and essence of Islamic Law, which aims to bring about a stability of life in the world by God's intention as the maker of Shari'a. The purpose and nature of Islamic Law consists of four aspects, namely; 1) realizing the benefit of man in this world and the Hereafter, 2) the realization of the benefits of Islamic Law must be understood to be by human nature, 3) after gaining a correct understanding, Islamic Law must be implemented by Muslims, 4) to provide legal protection and tranquility to Muslims even to non-Muslims (Rushd, 2022).

The benefits aspect can only be realized if the five main elements can be learned, namely religion, soul, offspring, reason, and property. Therefore, the categorization of the benefit of the world and the Hereafter shows that the nature of Islamic legal regulations has noble ideals because it makes spiritual elements the most essential part of its materials. In addition, pay attention to moral maintenance so that violators of morals and ethics will get legal sanctions. (Kuntowijoyo, 2022)

Understanding Islamic Law is related to the language dimension. The essence of language in Law is intended as a tool to understand the contents of Islamic Law, which aims to realize benefits. Therefore, Islamic legal regulations are made by attaching to their nation and language so that people can understand the laws contained in these regulations by knowing the language, knowledge of legal sources, and knowledge of the causes of making Islamic legal regulations. (Kuntowijoyo, 2022)

Aspects of implementing Islamic Law related to the human ability to implement the tactical provisions contained in the legal regulations. Human skills, in the definition, are divided into two parts. First, *Aaliyah al-ada'*, which is the nature or ability to act legally of a person who has been considered perfect for accounting for all his actions, both positive and negative. Second, *Ahliya al-wujubis* the nature of a person's ability to receive his rights, but not enough to be burdened with all his obligations. (Bakri, 2021)

Legal protection aims to bring man in the protection of God's Law so that human life will be stable, secure, and orderly in society. In other words, Islamic

Law seeks to free people from the influence of lust and to realize these ideals, Islamic legal regulations must pay attention to the strength of Islamic shari'a, which stems from two main elements. First, the moral element is the element that connects legal texts with the soul of individuals so that they can accept and obey the rules of the country properly and encourage them always to respect and feel sinful if they ignore them. Second, the witnessing element is the provision of Law as a consequence of who violates the Law, such as torture, fines, dismissal, and so on. (Audah, 2015) The four aspects above are an effort by Islamic Law to balance the context of the dynamics of community demands that require a new legal approach to maintain the stability of society from the struggle between Law and socio-culture in the contemporary era.

Juhaya S. Praja, in responding to the discourse on making Islamic law a support for development within the framework of the national legal system, said that, although in practice, it no longer plays a comprehensive role, Islamic Law still has great significance for the lives of its adherents. At least, there are three factors that, according to Juhaya Praja, cause Islamic Law still has a significant role in the life of the nation. First, Islamic Law has contributed to creating a system of values that govern the lives of Muslims, at least by determining what should be considered reasonable and evil, and what are the commandments, recommendations, impositions, and prohibitions of religion. Second, many legal and jurisprudential decisions of Islamic Law have been absorbed into the prevailing part of positive Law. Third, some groups still have theocratic aspirations among Muslims, so the full role of Islamic Law is still a slogan of struggle that still has considerable influence. (Praja, 2019)

In theory, Islamic Law has the concept of stability and change in its application in society. If Islamic Law is examined for its indoctrination and legal theories, then Islamic Law brings the teachings of stability and change to society. Thus, there is no conflict between the concepts of stability and change; stability will be achieved if the idea of change in the doctrines of Islamic Law is based on the pattern of renewal of Islamic Law according to the criteria of the Qur'an and the hadith of the Prophet which does not contradict social reality in the terms of the Hanafi and Maliki schools as *istihsan* and *maslahah mursalah*. (Fuady, 2017)

The Concept of Islamic Law in Facing Changes in Society

Suppose we want to actualize the teachings of Islam, especially in the field of Law and, more specifically, in jurisprudence. In that case, we must view jurisprudence as the dominant product of reason rather than revelation and, therefore, can be tampered with, changed, or even discarded at any time.

Jurisprudence should be considered a variant of a particularistic diversity associated with place and time.

In short, jurisprudence must be seen as a chain of unrelenting changes without questioning its validity because, in the end, jurisprudence is only a matter of a branch of religion. But to make the right choices requires several conditions. These at least three conditions must be met: First, the Muslim community's high level of education and openness. Second, there is courage among Muslims to make unconventional choices. Third, understand the sociocultural and political factors behind the birth of a particular product of jurisprudence thought to realize the particularism of the product of legal thought.

Thus, if different elements of particularism are found elsewhere or at other times, the product of legal thought must be changed. Laws are handed down to a society, and their application depends on the existence of that society. (Al-Asy'mawi, 2014) Thus, the dynamics of Islamic Law can continue to be maintained and developed.

The concept of legal change brought about by Islamic Law reflects the purpose and essence of Islamic Law, which aims to bring about stability of life in the world by God's intention as the maker of Shari'a. The purpose and nature of Islamic Law consists of four aspects, namely: 1) realizing the benefit of man in the world and the Hereafter, 2) humans must understand the benefits of Islamic Law as inherent to their nature, 3) after gaining the proper understanding, Islamic Law must be implemented by Muslims, 4) to provide legal protection and tranquility to Muslims even to non-Muslims. (Al-Dharaini, 1975)

This aspect of fame must fulfill five essential elements: maintaining religion, soul, offspring, reason, and property. The fullness of this element reveals that Islamic Law embodies noble ideals, facilitating stability for individuals in all their worldly endeavors. It intricately concerns itself with both the afterlife and worldly affairs. To provide a comprehensive outlook on external realities and their consequences, individuals must comprehend the categories pivotal in addressing life's challenges. The understanding of Islamic Law is intricately linked to the dimension of language. People need to understand the categories to consider when solving life problems to give a fair perspective on the outside world and its outcomes.

Understanding Islamic Law is related to the language dimension. The essence of language in Law is intended as a tool to understand the contents of Islamic Law, which aims to realize benefits. Therefore, Islamic legal regulations are made by attaching to their nation and language so that people can understand the laws contained in these regulations by knowing the language, knowledge of legal sources, and knowledge of the causes of making Islamic legal regulations.

(Zarqa, 2021) Understanding this aspect enables the community to understand rules substantively and thoroughly so that they are directly proportional to their application.

Aspects of implementing Islamic Law related to human abilities in implementing the tactical provisions contained in the legal regulation. Human skills, in the definition, are divided into two parts. First, Aaliyah al-ada' is the nature or ability to act legally of a person who has been considered perfect for accounting for all his positive and negative actions. Second, Ahliya al-wajib is the nature of a person's ability to receive his rights but must be burdened more with all his obligations.(Abdul Qadir Audah, 2015) The determination of whether a person is capable of acting in Law in addition to being seen in terms of his intellect is also caused by biological laws. A person's intellect can change, lack, and disappear altogether, resulting in them needing to be more competent to act as subjects of Law so that state regulations cannot be forced on them to be implemented.

Legal protection aims to bring man into the protection of God's Law so that man's life will be stable, secure, and orderly in society. In other words, the rule of Islamic Law seeks to free man from the influence of lust. To realize this ideal, the regulation of Islamic Law must pay attention to the strength of Islamic shari'a, which stems from two main elements. First, the moral element is the element that connects legal texts with the soul of individuals so that they can accept and obey the rules of the country properly and encourage them always to respect and feel sinful if they ignore them. Second, the element of sanctions is legal provisions as a consequence of who violates the Law, such as torture, fines, dismissal, etc. (Haroen, 2016)

When implemented by law actors, especially state leaders, judges, and society, the basic teachings of Islamic Law will provide stability in socio-political life and change the capitalist culture towards a culture based on religion. The strength of social life was created during the reign of the Prophet Muhammad and Khulafa' al-Rashidin as a reflection of the life established by Allah as affirmed by the Qur'an (baldatun tayyibatun wa rabbun gafur).

In understanding Islamic Law, two things must be considered: First, believers perceive it as teachings originating from the most holy, the most perfect, and the most true, attributing it with a divine dimension. Muslims believe Islamic Law is a sacred teaching in this dimension because it stems from the Most Holy, Most Perfect, and Most True. In this dimension, Muslims believe Islamic Law is a religious teaching because it emanates from the Most Holy, and its sacredness is always maintained. (Sunarto (2019) understands Islamic Law in this sense as encompassing a vast scope beyond terminology limitations, portraying it as

shari'a. Second, Islamic Law has a human dimension. In this dimension, Islamic Law is an earnest human attempt to understand sacred teachings using the linguistic and Maqashid approaches. In this dimension, Islamic Law is understood as the product of thought carried out with various techniques known as ijtihad or, at a more technical level, called distinct al-ahkam. (Praja, n.d.) Therefore, development efforts are needed through multiple methods and approaches that are always based on the values of benefit, which are the goals of Islamic Law, to make Islamic Law so that it can continue to be actual in the lives of Muslims. Because Law is a reflection of the value system that is believed by the community as an institution in people's lives, it means that the content of Law should be able to capture the aspirations of people who grow and develop, not only those who are current, but also as a reference in anticipating social, economic, and political developments in the future. (Santoso & Lestari, 2021)

This way of thought demonstrates that Islamic Law must be able to engineer human behavior to achieve its aims and is not only a static norm that favors certainty and order. It is time for Islamic jurists to think about the study and thought of Islamic Law within the framework of sociology and social history methods to improve Islamic legal thought and research in future societies. In other words, the study of Islamic Law examines the social, political, and cultural elements that led to the development of its ideas and their effects on society—additionally, the interplay of the legal thinker with the sociocultural or socio-political context. Therefore, if Islamic Law can no longer address the different issues that the Ummah faces due to the passing of time, it must be revised to keep pace with new developments.

CONCLUSION

The concept of Islamic Law in maintaining social dynamics and Islamic Law are interdependent in change. Changes in Islamic Law can bring about social change if Islamic Law becomes customary in a society. The balance between social stability and social change is something that every citizen desires. Balance in society safeguards interests by the aims and objectives of shari'a Law. The idea of legal change brought about by Islamic Law reflects the aim and core of Islamic Law, which seeks to bring about stability of life in the world in line with God's plan as the creator of Shari'a. The four aspects of the goal and nature of Islamic Law are as follows: 1) realizing man's benefits in this life and the next; 2) realizing these benefits requires an understanding of how they fit with human nature; 3) putting this understanding into practice; and 4) ensuring that Muslims, as well as non-Muslims, have legal protection and peace.

REFERENCES

- (1) Abdul Qadir Audah. (2015). *Kritik Terhadap Undang-undang Ciptaan Manusia*. Bina Ilmu.
- (2) Ahmad Rofiq. (2022). *Pembaharuan Hukum Islam di Indonesia*. Gama.
- (3) Al-Asymawi, M. S. L. T. (2014). *Ushul al-Syari'ah, diterjemahkan dengan judul Nalar Kritis Syari'ah*. LkiS.
- (4) Al-Dharaini, F. (1975). *Al-Manahij al- Ushuliyyah Fi Ijtihad Bi al-ra'yi Fi al-Tasyri*. Dar al-Kitab al-Hadis.
- (5) Audah, A. Q. (2015). *Kritik Terhadap Undang-undang Ciptaan Manusia*. Bina Ilmu.
- (6) Azhari, F. (2016). Dinamika Perubahan Sosial Dan Hukum Islam. *AT-TURAS: Jurnal Studi Keislaman-Tahrir*, 16.
- (7) Bakri, A. J. (2021). *Konsep Maqashid al-Syari'ah Menurut al-Syatibi*. Raja Grafindo Persada.
- (8) Fuady, M. (2017). *Sosiologi Hukum Kontemporer Interaksi Hukum, Kekuasaan, dan Masyarakat*. Citra Raditya.
- (9) Hamka. (2021). *Antara Fakta dan Khayal "Tuanku Rao."* Bulan Bintang.
- (10) Haroen, N. (2016). *Ushul Fiqhi*. Logos.
- (11) Ichtijanto. (2019). *Pengembangan Teori Berlakunya Hukum Islam di Indonesia dalam, Hukum Islam di Indonesia Perkembangan dan Pembentukan*. Rosdakarya.
- (12) Johan Nasution. (2018). *Metode Penelitian*. Mandar Maju.
- (13) Kuntowijoyo. (2022). *Muslim Tanpa Masjid, Esai-Esai Agama, Budaya, dan Politik dalam Bingkai Strukturalisme Transcendental*. Mizan.
- (14) M. Yahya Harahap. (2019). *Memposisifkan Abstraksi Hukum Islam dalam Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*. Logos.
- (15) Moelong, L. J. (2015). *Metodologi Penelitian Kualitatif*. Remaja Cipta Rosda Karya.
- (16) Mudzhar, M. A. (2019). Pengaruh Faktor Sosial Budaya terhadap Produk Pemikiran Hukum Islam. *Jurnal Mimbar Hukum*, 2.
- (17) Najih, M. (2021). *Pengantar Hukum Indonesia; Sejarah, Konsep Tata Hukum & Politik Hukum Indonesia*. Setara Pres.
- (18) Octavia, N. A. (2020). *YANG DIANUT MAHKAMAH KONSTITUSI DALAM PENGUJIAN PERUNDANG-UNDANGAN : KESALAHAN TEORITIK DALAM PUTUSAN MAHKAMAH KONSTITUSI*. 171–186.
- (19) Praja, J. S. (n.d.). *Sejarah Hukum Islam:Dari Kawasan Jazirah Arab sampai Indonesia*. Pustaka Setia.
- (20) Praja, J. S. (2019). *Hukum Islam di Indonesia, Pemikiran dan Praktik*. Remaja Rosda Karya.
- (21) Rhamadhan, S., & Utami, A. D. (2022). *PERAN MEDIA DALAM PERKEMBANGAN MASYARAKAT ISLAM ANTI*. 2(2), 103–122.
- (22) Rushd, I. (2022). *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*. Daar al-Kutub al-Arabiyyah.

- (23) Santoso, L., & Lestari, D. I. (2021). Problematika Implementasi Perjanjian Dalam Kerjasama dan Bagi Hasil Di Bengkel Las Semoyo Jaya: Sebuah Tinjauan Hukum Islam. *Invest Journal of Sharia & Economic Law*, 1(1), 74–96. <https://doi.org/10.21154/invest.v1i1.2631>
- (24) Sarmadi, A. S. (2012). *Dekonstruksi Hukum Progresif Ahli Waris Pengganti Dalam Kompilasi Hukum Islam*. Aswaja Pressindo.
- (25) Sunarto, M. Z. (2019). Mediasi dalam Perspektif Maqashid Syariah: Studi tentang Perceraian di Pengadilan Agama. *AT-TURAS: Jurnal Studi Keislaman*, 6(1), 97–115.
- (26) Zarqa, M. A. (2021). *Syarh al-Qawaaid al-Fiqhiyah*. Dar Qalam.
- (27)