
RESEARCH ARTICLE

Revisiting Islamic Law in Indonesia's Legal System Discourse: A Critical Analysis of the Legal and Social Implications

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ABSTRACT

This article examines the difficulties associated with reintroducing Islamic law (fiqh) into the legal system and regulations of a pluralistic contemporary society. The function of Islamic law in the context of contemporary society is examined, including its historical impact on Islamic civilization and the significance of Islamic legal legislation in Islamic modernism. The current reality is Islamic law's struggle with modern nation-states, especially in terms of its transformation and incorporation into the national legal system. The article also discusses Ibn al-Muqaffa's proposal for the first Islamic legal code, which sought to establish universally applicable legal provisions. The purpose of this article is to cast a spotlight on the challenges and opportunities of reintroducing Islamic law into the regulatory framework of contemporary society. To better comprehend the implications and potential outcomes of such integration, there is a need for more scholarly work and research. In conclusion, the incorporation of Islamic law into contemporary legal systems is an ongoing and significant topic of discussion in a pluralistic modern society. While there have been attempts in the past to codify Islamic law within state regulations, there are still numerous obstacles to overcome before it can be successfully reintroduced into contemporary legal frameworks. Progress can be made towards the incorporation of Islamic law into the regulatory framework of contemporary society through sustained scholarly work, research, and consideration of ethical and social implications.

KEYWORDS

Islamic law, Legal system, Indonesia, legislation

ARTICLE INFORMATION

ACCEPTED: 05 May 2023

PUBLISHED: 11 May 2023

DOI: 10.32996/ijlps.2023.5.3.3

1. Introduction

The importance of law in Islam is undeniable and is recognized by scholars such as Joseph Schacht and Anderson. (Schacht, 1960, 1993). Islamic law (fiqh) is also considered one of the most important intellectual products of Islam, widely distributed across the Islamic world. (Najib, 2020). The history of Islamic legal thought has influenced the ebbs and flows of Islamic civilization as a whole. Therefore, if one of its products is to be identified, Islamic civilization can be seen as a "civilization of law". (Barkah, 2022; Syamsoni, 2015) From the modern perspective, the tradition of Islamic legal thought has shifted towards the formulation of Islamic legal legislation within nation-state systems. (Gayo, 2015).

This is where the struggle for Islamic law in the midst of social and national pluralism occurs. Islamic law does not have adequate experience in dealing with modern nation-states. (Farid, 2015; Zaki, 2015). There are more of the heritage of fiqh collections and classical scholars' fatwas as products of legal thought outside the state's jurisdiction rather than the heritage of legal decision codification and legislation as products of Islamic legal thought within state regulations. (Dahlan, 2016; Ismail et al., 2020; Keri, 2019).

The transformation and integration of Islamic law into the national legal system must become a primary agenda and issue if Islamic law is to be involved in modern society's regulatory framework. This is supported by Schacht's assessment that Islamic legal

legislation is the most important manifestation of Islamic modernism. (Schacht, 1960). Abdurrahman Wahid also suggested that the integration of Islamic law into national law would naturally solve various internal-epistemological issues within Islamic law. (Wahid, 1991)

Based on these facts, what are the challenges and opportunities of revisiting Islamic law in the legal system and regulations of a pluralistic Indonesian modern society, and what are the ethical and social implications that need to be taken?

2. Literature Review

Some people still view Islamic legal legislation as an intellectual work that deviates from fiqh due to a difference in perspective that considers Islamic legal legislation as a translation of fiqh. Consequently, Islamic law still appears stagnant. This phenomenon has existed for a long time in the history of Islamic law application. There is a conflict, according to Coulson's terminology, between the traditional Islamic legal thought in the country and the Islamic legal thought outside the bureaucratic authority. However, Islamic law was initially inclusive in the leadership of the Prophet and the Khulafa Ar-Rashidin.

There have been very few intellectual efforts to professionally formulate the format of transforming and integrating Islamic law into modern state and legal systems. Throughout Islamic legal history (Tarikh Tasyri 'al Islami), among the few recorded ones is Ibn al-Muqaffa's idea (720-760 AD) that proposed the first Islamic legal legislation or taqnin to Khalifah Ja'far al-Mansur. (Kristó-Nagy, 2009; Lampe Jr, 1987) The background of taqnin was the anarchic and chaotic Islamic legal situation due to the absence of official regulations that Qadhis could rely on.

According to Ibn al-Muqaffa, there was a need to establish a legal provision that applied to the entire population. The legal provision is derived from the Quran and Sunnah as well as through the methodological process in Islamic legal theory, Ushul fiqh. (Sulong, 2014) In cases where there are no provisions in these two legal sources, they are based on the principle of public interest and justice. According to Ibn al-Muqaffa, the authority to codify this law is the government or Khalifah.

Ibn al-Muqaffa's basic idea seems to remain consistent in using gradual mechanisms and traditions that are commonly used in the process of forming Islamic law or ijthihad. (Sonafist et al., 2020). The codification proposed by Ibn al-Muqaffa is open and partial and does not narrow the scope of ijthihad. However, what is important is the realization of legal certainty and unity. This model is now being developed in legal politics and legislation in various countries to anticipate any new developments. (Umar, 1996)

Despite the good intentions of ensuring legal certainty, Ibn al-Muqaffa's idea is not without obstacles. It even became a heated controversy when the caliph sought to unify the law. For example, the failure of Caliph Ja'far al-Mansur in asking Imam Malik to become the head of Qadhi and write a book of law that combines all schools of thought to be applied to the entire people. Imam Malik only complied with the request to write a book of law. This is the background of the emergence of the book al-Muwatta' by Imam Malik. (Afandi, n.d.; Yusdani, 2022).

Imam Malik's refusal actually reflects the strong scientific nature and weak political framework of Islamic law in the history of the application of Islamic law. Islamic law is seen more as an academic and scientific work that is applied through fatwas, outside the path of power. While the power that tries to apply the law through power or develop it as a means of power is not sufficiently developed.

The experience of Turkey can serve as an example of the strong legacy of the traditional "relationship" between Islamic law and the state. (Anderson, 1959; Hadi, 2014) As a result, the codification of Sheikh al-Islam Ottoman's decisions in Istanbul, along with its commentary, al-Majallet, failed to become the sole codification of the state. This is because, in an anarchic manner, private fuqaha's decisions are still widely appreciated by society. (Rochmat, 2014) Consequently, the "national" Islamic law is devoid of community participation. (Wahid, 2001).

This is what makes the experience of Islamic law vis-à-vis the state unique. It can be understood considering the characteristics of the Islamic law that provide methodological space between revelation and the maximal use of reason in the process of ijthihad. (Hatta, 2008) Thus, Islamic law is multi-interpretative. Moreover, Islamic law is believed to be divine (Ilahiyah) and, therefore, functional, binding, and effective even without strict penetration and intervention from the state.

The rapid dynamics of Islamic legal thinking have indeed enriched Islamic legal theories. Excessive state control can stifle the creative potential of society, which is greater. However, this must be balanced with proportional recognition of the role of the state, especially in the mainstream of modern states - as the sole authority for the legality of a law. Otherwise, it will only lead to "anarchy" and "legal uncertainty." Furthermore, it can marginalize Islamic law and be excluded from the enrichment of state law, which also has its dynamics. (Hadi, 2014; Maryani et al., 2022).

At first glance, the above historical facts seem to indicate that attempts to approach legal legislation are not a tradition that has ever succeeded in the historical experience of the Islamic legal system. Nevertheless, in this modern era - apart from the pros and cons of whether it is permissible or not - the legal system's legislation seems to be an unavoidable demand of the times. According

to Wahiduddin Adams, legal codification and legislation have become objective and urgent requirement (Wahiduddin, 1990), as the demands of modern law are not only legal justice but also legal certainty.

The discourse on Islamic legal legislation ultimately brings not only a new tradition as a product of Islamic legal thought and literature in modern times but also implies a profound perspective. It must be recognized that legal legislation is not simply a matter of formalizing it into state regulations. (Bahardin, 2012; Tahmid, 2020) Enactment of legal rules must address substantive issues, and form and implementation processes, which must ensure the principles of justice, in addition to legal certainty.

In this context, the perspective of the supremacy of law in Islam must truly be emphasized. The dominance of the scientific characteristics of Islamic law, as a religious institution as well as a social institution, should be able to guarantee an atmosphere of "equal before the law" and legal certainty. (Ridwan, 2018) The internal dynamics of Islamic legal thought should rightfully contribute to the development of an inclusive relationship pattern within the current discourse and social struggles of the nation. This is important in order to renew and avoid getting caught up in the dichotomous conflict between "state" and "private" status. (Farid, 2015; Keri, 2019) The supremacy of law in Islam is not based on its external status or form. Islamic law can indeed be transformed through various social institutions and civilizations. However, the recognition of the supremacy of law always implies an authoritative power with its own distinctive characteristics. This is because an Islamic society without the supremacy of law is merely fiction.

3. Methodology

This study was conducted with a comprehensive literature review of relevant legal and social sources to provide an in-depth understanding of the legal and social implications of integrating Islamic law into the Indonesian legal system. The study also involves a critical discourse analysis of legal and social texts and discourses on the integration of Islamic law in Indonesia. Interviews and surveys were also conducted to gather data on the perspectives and opinions of legal experts, scholars, and the wider Indonesian society on the reintroduction of Islamic law. The data collected was analyzed using qualitative research methods to identify key themes and patterns related to legal and social implications. The data was conducted from a comprehensive review of scholarly articles, books, and other relevant sources that discuss the historical influence of Islamic law on Islamic civilization, the role of Islamic law in modern society, and the challenges of integrating it into modern legal frameworks. The study also examined the experiences of different countries that have attempted to integrate Islamic law into their legal systems. The findings of the study will provide a critical analysis of the legal and social implications of reintroducing Islamic law into the Indonesian legal system and contribute to the ongoing discourse on integrating Islamic law into modern legal frameworks.

4. Results and Discussion

In Indonesia, efforts to reintroduce Islamic law in the discourse of national identity have been ongoing for a long time. This dates back to the era of Islamic empires in Nusantara, where Nur ad-Din ar-Raniri wrote the book *Shirat al-Mustaqim* in 1628, which was the first law book distributed throughout Nusantara. Later, it was explained by Syekh Arsyad al-Banjari and became the substantive law in settling cases among Muslims in the Sultanate of Banjar. However, these Islamic legal works were still written following the classical fiqh system. (Mudzhar, 1998a)

The practice of reintroducing Islamic law in the discourse of national identity continued during the colonial period. This was the first time that Islamic law in Indonesia was introduced and incorporated into the tradition of modern state law legislation. The *Compendium Freijer* (1760), *Mugarrar* (1750), *Cirebonasche Rechtboek* (1757-1760), and *Compendium Indlansche Wetten bij dehoven van Bone en Goa* (Arso, 1998) were created. Islamic law was then given its legal basis in the *Regeering Reglement* (RR) of 1855. (Mudzhar, 1998b)

This situation changed after the implementation of Snouck Hurgronje's reception theory through Article 134 (2) of the new *Indlansche Staatsregeling* (IS) in 1929. This theory actually initiated the conflict between Islamic law and the state. Islamic law was pitted against adat (traditional customary law) to the point that it seemed like an unsolvable conflict (Jimly, 1998). Nevertheless, efforts to reintroduce Islamic law continued. (Azra, 2006)

Specifically, these efforts have given rise to various theories on the application of Islamic law in the country, such as the *receptie* exit theory and the *receptio a contrio* theory. The history of Indonesia also records that efforts to renew Islam, from the *Walisongo* period, *Paderi* Movement, and *Muhammadiyah*, to the idea of *Reactualizing* Islamic teachings by *Munawir Sjadzali*, have always been in the context of the relationship between Islam and the state, with their respective characteristics. (Asshiddiqie, 1990)

The dynamics of Islamic legal thought in the discourse of national identity in Indonesia gained momentum around the 1970s. Since then, the *National Marriage Law No. 1/1974* and the *Islamic Court Law No. 7/1989* were consecutively introduced. The pinnacle of this momentum was the compilation of *Islamic Law* in 1991, which was considered by some as a national *ijma'* (consensus). Until now, laws on Islamic banking and zakat have even been enacted. (Ikrom, 2018; Keri, 2019).

Legislation, as an effort to reintroduce Islamic law in the national discourse, should not only mean the formal application of Islamic law through national regulations for the community. There are many aspects of Islamic law that can be applied independently

without waiting for recognition or intervention from the state or government. This applies not only to aspects related to religious rituals but also to some aspects of mu'amalah law. (Lukito, 2006; Sembodo, 2005)

Overly relying on state intervention in the implementation of religious law is not always beneficial. While bureaucratic standardization of religious law may promise order, it can also strengthen the government's network, resulting in further restrictions on individual freedoms. (Dahlan, 2016; Nofiaturrachmah, n.d.) Moreover, state legitimacy without a parallel shari'a consciousness among the people will only give the impression of an authoritarian Islamic law and may not satisfy a sense of justice. Therefore, a distinction must be made between qadhai (juridical) and diyani (ethical) Islamic law. In the Indonesian context, this requires a juridical study of Islamic law practices that existed in the Nusantara Islamic kingdoms. (Tahmid, 2020) This is also important to reconstruct the tradition and legal thought of Islam that existed in the Nusantara region in the past.

Islamic law of "Diyani" does not need to be institutionalized in official state regulations since it concerns the interests of individual members of society. On the other hand, the Islamic law of "qadhai" needs to be recognized and officially regulated by the state when it involves social activities and dynamics. (Baltaji, 1977) This is important because the urgency of recognition and regulation of the law is to guarantee tolerance and legal order in society. This should be done while avoiding an ideological recognition of a particular religion.

The agenda of Islamic law that is concerned with the fate of humanity should also be raised, as this is the central tenet of Islamic legal philosophy regarding the preservation of human dignity and universal values. (Jaenudin, 2020; Lubab & Pancaningrum, 2015) In accordance with mu'amalah law, the emphasis should be on enhancing the economic quality of the community. The community requires legal protection to prevent widening social and economic disparities.

Renewal of Islamic law has become a pressing necessity due to its prospective adoption as national law. The renewal can be accomplished by expanding Islamic law's guiding principles. Without interaction between the principles of Islamic law and changes in society, it will be difficult to realise the goal of making Islamic law the national law.

In the context of this renewal, it is also crucial to highlight the humanistic and inclusive characteristics of Islamic law. To avoid losing its essence as a universal human law, Islamic law must be translated in accordance with the spirit of the times and humanity as the literal application of Syari'ah. In addition to focusing on legal ethics, Islamic law must also seek to resolve the problems of human existence.

Islamic law is inextricable from its environment, Indonesian tradition, and social transformation. Therefore, Islamic law must be able to interact intelligently and continuously with the social and political environment. Failure to do so can cause issues in all facets of social and national life.

5. Conclusion

This article has examined the challenges and opportunities of reintroducing Islamic law into the regulatory framework of contemporary society. Despite the fact that Islamic law has played a significant role in Islamic civilization, its incorporation into contemporary legal systems is not without obstacles. The article has discussed Islamic law's struggle with modern nation-states, Turkey's experience in coping with Islamic law vis-à-vis the state, and Islamic law's multiple interpretations. To better comprehend the ramifications and potential outcomes of such integration, it is crucial to continue scholarly inquiry and research. In addition, ethical and social factors must be considered when reintroducing Islamic law into modern legal systems. In the context of a pluralistic contemporary society, the incorporation of Islamic law into modern legal frameworks is a topic of ongoing and vital debate. With continued scholarly labour, research, and consideration of ethical and social implications, Islamic law can be integrated into the regulatory framework of modern society.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

Publisher's Note: All claims expressed in this article are solely those of the authors and do not necessarily represent those of their affiliated organizations, or those of the publisher, the editors and the reviewers.

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