

Islamic Law and Indonesian Society: A Study on the Characteristics of Islamic Law in Indonesia

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Abstract. *This study aims to elaborate on philosophical perspectives on Islamic law and Indonesian society. The focus of this study is a philosophical view on the characteristics of Islamic law in Indonesia. This study uses a critical review method (critical review) of several primary and secondary literature on Islamic law, Islamic legal philosophy, and the development of Islamic law in Indonesia. Through this critical study, I endeavor to elaborate on the principles and essential characteristics of Islamic law and then reflect it into the Indonesian context. The nature and characteristics of Indonesian Islamic law are philosophically in harmony with the world view and attitude of Indonesian human life. Islamic law in Indonesia and the Indonesian people have the same characteristics, trying to eliminate difficulties, narrowness, and shortsightedness. Both tend to be open, tolerant, and respectful of all God's creatures. Both have the same view of the burden of life. Humans should only be burdened according to their abilities. They tend to have the same perception of tajarrud. Both of them want to realize the benefit of as many people as possible, realize equitable justice, prevent crime, and uphold the values of humanity, humanization, ethics, morals, and social welfare.*

Keywords: *Islamic law, Indonesian society, characteristics of Islamic law.*

I. Introduction

Muslims believe, to be sure, that Islamic law is sourced and determined by God and the Prophet Muhammad. Through the Qur'an and the Hadith, God and the Prophet Muhammad set out the principles, orders, prohibitions, and suggestions, which are the duty of Muslims to explore and implement them (Al-Musâwi, 1966). Through the word of God and the words of the Prophet Muhammad also, Muslims can find out various past events, stories of events, historical events, examples, lessons, and so forth.

Nevertheless, as a creature that is endowed with the superiority of reason and mind, humans also need the secrets, wisdom, goals, and philosophy of meaning behind the various commands, prohibitions, suggestions, events, stories contained, and contained in the Qur'an and the Hadith. That is why among human beings, there is a branch of knowledge called philosophy, or in Islamic treasures called wisdom. No exception to Islamic law,

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the ulema also developed philosophical disciplines or wisdom (*hikmah*) of Islamic law, among which aimed at philosophically delving into the meanings contained in legal texts or relating to aspects of Islamic law.

That is why in Islamic intellectual treasures known various works that explore the philosophy or wisdom of Islamic law, for example, *Falsafat al-Tasyri' fi al-Islam* (Mahmashany, 2003; Mahmassani, 1981), *Hikmah al-Tasyri' Islam wa Falsafatuhu* (Al-Jarjawy, 1995), *Zad al-Ma'ad fi Hadyi Khair al-Ibadah* (Al-Jauziyah, 1998), *Asrar al-Syari'ah al-Islamiyah* (Affandi, 1999), *Al-Madkhal li al-Fiqh al-Islami* (Madkour, 2001), and so on.

Islamic legal philosophy by scholars is used as one source in the development of Islamic law. Although the scholars differ in their views on the object of Islamic legal philosophy, in general, the objects of study of Islamic legal philosophy include: (1) the principles and fundamentals of Islamic law (*usus al-tasyri al-ahkam wa mabadi'uhu*), (2) the nature of Islamic law (*thabi'at at-Islami al-ahkam*), (3) the beauty of Islamic law (*mahasin al-ahkam*), (4) the characteristics of Islamic law (*khasa'ish al-ahkam*), (5) the objectives of Islamic law (*maqashid al-ahkam*); (6) philosophy or hikmah of worship and *mu'amalah*. In addition to the six objects of study of Islamic legal philosophy, the objects studied in *usul fiqh* are also partly discussed in Islamic legal philosophy. In addition, the issue of secrets of Islamic law (*asrar al-ahkam*) is also the object of study in this field. Still, many scholars reject the discussion of *asrar al-ahkam*, including being opposed by Imam Al-Ghazali in his book *Al-Suluki* (Al-Ghazali, 2004), Imam Izzuddin Ibn Abdi as-Salam in his book *Qawa'id al-Ahkam* (As-Salam, 1996), and Al-Dahlawi in his book *Al-Hujjat al-Balighah* (Al-Dahlawi, 2002).

This study seeks to elaborate on philosophical perspectives on Islamic law and Indonesian society. This study focuses on philosophical views on the characteristics of Islamic law in Indonesia. Through this study, it is expected to obtain an overview of the principles, basis, and characteristics of Islamic law from philosophy.

II. Method

This study uses a critical review method (critical review) of a number of primary and secondary literature on Islamic law, Islamic legal philosophy, and the development of Islamic law in Indonesia. Through this critical study, I endeavor to elaborate on the principles and basic characteristics of Islamic law, then reflect it into the Indonesian context. The elaboration of the principles and basic characteristics of Islamic law is carried out using a philosophical perspective, precisely the philosophy of Islamic law.

III. Results and Discussion

Principles of Islamic Law

According to the scholars of wisdom who study the philosophy of Islamic law, Islamic law is established, built, and developed based on the principles (1) eliminate narrowness and narrow-mindedness (*nafyu al-haraj*), (2) reduce the burden (*qillat at-taklif*), (3) is gradual (*tadarruj*), (4) is in line with the benefit of the people, (5) realizes equitable justice, and (6) prevents the potential of crimes (Qardhâwy, 1987).

The principle of eliminating narrowness and narrow-mindedness is based on the word of God in Surah Al-Haj verse 78 and Surah Al-Baqarah verse 286, and the following hadith of the Prophet: “And He did not make it difficult for you in religious matters” (QS Al-Hajj [22]: 78) “Allah does not burden a person, but according to his ability” (QS Al-Baqarah [2]: 286). “I was sent to bring an easy and easy religion” (H.R. Ahmad and Al-Baihaqi). The principle of reducing the burden or *qillat at-taklif* is based on the word of God in Surah Al-Maidah verse 101 and the words of the Prophet (PBUH): “O you who believe, do not ask (to your Prophet) things which if explained to you, undoubtedly troubles you “(QS Al-Maidah [5]: 101). “Muslims who have the greatest sins are those who ask about something that is not forbidden, then forbid the case against the people because of that person’s question” (Al-Bukhari, 1998).

Determination of law gradually, step by step, or *tajarrud* becomes one of the principles and characteristics of Islamic law. With such a process, Islamic law recognizes the limitations of mankind, both in terms of thoughts, actions, behavior, and the dynamics of its development. Even the Qur’an itself is revealed verse by verse and not at the same time revealed to the Prophet Muhammad. An example of the establishment of Islamic law in *tajarrud* can be found in the process of prohibiting *khamr*, from the moment it is permissible, the affirmation of the danger until it is forbidden to drink it. Another example is the effort of Islamic law to eliminate slavery among Arab people who are so ingrained, where Islamic law does not prohibit slavery at once, but through the suggestion of freeing slaves or setting certain legal sanctions by freeing slaves.

The principle of “along with and following the benefit” emphasizes the purpose of Islamic law, which is nothing but for the happiness of humanity in the world and the hereafter. Islamic law is not set for a purpose that can give birth to consciousness for humans and the natural environment. Nor is it determined if it conflicts with the benefit of human society. In connection with this, *Ushul Fiqh* even developed a theory called “*maslahah mursalah*” as a source of Islamic law (Bakri, 1996; Dali, 2018; Ibn-Rusyd, 1957; Padela, 2019; Syafei, 2017). The pioneer of the “*maslahah mursalah*” theory, Imam Malik bin Anas, asserted that Islamic law is aimed at the interests of society, and serves to provide benefits and prevent obedience (Al-Syatibi, 1957; Al-Zuhayli, 1987; Zahrah, 1967).

The scholars usually classify *maslahah* into two categories: (1) *masalih mu’tabarah* or the interests recognized by shari’ah, as well as protecting religion, honor, reason, life, wealth, and family. The importance of protecting basic human rights is truly recognized and guaranteed by Islamic law; and (2) *masalih mursalah*, unlimited interests and no provisions. The realization of equitable justice is the next principle of Islamic law. It’s in line with the view of Islam that does not distinguish humans because of their ethnicity, skin color, language, position, position, and other physical attributes and backgrounds. Islam only distinguishes humans based on the level of piety, faith, and good deeds. In the perspective of Islamic law, realizing equitable justice is a sacred belief and duty, which must be carried out by humans seriously, starting with sincere determination and intention to enforce it and manifested in attitudes, behaviors, actions, and policies (Al-Bashri, 1983; Hasaballah, 1964).

Because justice is so fundamental to the realization of people’s welfare and prosperity, many scholars have identified justice with piety. For example, Shaykh Alauddin Al-Kasani, in his book “*Bada’i al-Sana’i fi Tartib al-Shari’ah*” states, “justice is one of the best piety and one of the most important obligations after faith in God” (Al-Kasani, 1999). And Muhammad Muslihuddin, in his book “*Philosophy of Islamic Law and the*

Orientalist: A Comparative Study of Islamic Legal System” says, “giving justice is the noblest step of piety” (Muslihuddin, 1992).

The next principle of Islamic law is the prevention of potential crime. Based on this principle, in establishing Islamic law, the scholars use the principle, everything that tells us to *mubah*, is seen as *mubah*; everything that conveys us to *makruh*, is seen as *makruh*; and everything that plunges us into the forbidden, also the illegal. A number of Islamic legal principles in my view have strong relevance to the outlook and attitude of Indonesian Muslim life, where Indonesian Muslims and Indonesian people have a look and attitude of life that likes to eliminate narrowness and narrow-mindedness, reduce burdens, gradual (*tadarruj*), prioritize benefit, seeks to achieve equitable justice, and prevent the potential of crimes (Alatas, 2018; Yunus, 2016).

Characteristics of Islamic Law in Indonesia

The scholars, based on their experience in conducting studies of Islamic law, concluded three characteristics or basic characteristics of Islamic law. The three basic characteristics of Islamic law are *takamul* (perfect, complete and round), *wasathiyah* (balanced, harmonious, not extreme), and *harakah* (dynamic, moving, and developing under the development of society) (Pitchan, 2018; Salim, 2015; Shinkafi, 2017)

Takamul

Islamic law forms society in a unified, whole unity even though the Indonesian people differ in ethnicity, culture, language, skin color, geographical location, and so on. Due to the nature of Islamic law that transcends ethnicity, culture, language, skin color, geographical location, it can be stressed that Islamic law has a perfect character. Islamic law does not only apply to the Arab community, not only Melayu, Sundanese, and Javanese people, but all humanity throughout the world. Why is that? Because Islamic law brings together all different angles and aspects in one unit. Therefore, in fact, Islam does not want any contradiction between *ushul* (principal) and *furu* (branch), but each other is complementary, mutually reinforcing, and perfecting each other. Because of the perfection of Islamic law, it can serve all the different character, character and character of Indonesian people. No one type of human being is ignored by Islamic law (Butt, 2018; Kasdi, 2019).

The perfection of Islamic law is also since Islam is the closing religion that completes the entire mission of the previous prophets. As a closing religion, Islamic law covers a variety of systems, laws, and laws that govern various aspects of the formation, formation, and reform of the law, as well as regulating all aspects of community life, both related to matters of faith, worship, and morals as well as those relating to law and legislation, such as civil law, criminal law, civil law, social order, or international relations (Elviandri, 2018). In addition, Islamic law also covers the fundamentals of government, economic principles, and noble social values that can be adopted by the Indonesian people. All the rules or systems of life are contained in soft and wise principles through eternal law, which always gives without taking, and integrates without dividing because Islamic law is revealed by God the Wise (Dali, 2018).

The scope of the Islamic law that this *kaffah* affirmed by God in His words: “... We have not neglected anything in the Book ...” (Q.S. Al-An’am: 38). “And We send down to you Al-Kitab (Al-Qur’an) to explain everything and instructions and grace and good news for those who surrender” (Q.S. An-Nahl: 89). Thus, none of the problems escaped the instructions and rules established by the Qur’an and the Hadith. Even though there are among Indonesians who view Islamic law as only dealing with matters of worship (prayer, fasting, zakat,

pilgrimage) alone, in fact, Islamic law deals with all human life. In the economic and financial fields, for example, God says “Whenever you contract a debt from one another for a known term, commit it to writing. Let a scribe write it down between you justly, and the scribe may not refuse to write it down according to what Allah has taught him; so let him write, and let the debtor dictate; and let him fear Allah, his Lord, and curtail no part of it. If the debtor be feeble-minded, weak, or incapable of dictating, let his guardian dictate equitably, and call upon two of your men as witnesses; but if two men are not there, then let there be one man and two women as witnesses from among those acceptable to you so that if one of the two women should fail to remember, the other might remind her. Let not the witnesses refuse when they are summoned (to give evidence)” (QS. Al-Baqarah: 282). In the field of state administration, Allah says “... while their business is (decided) with deliberation between them ...” (Q.S. Ash-Shura: 38). In the field of justice, God says “... And (order you) when setting laws among men so that you determine them fairly ...” (Q. An-Nisa: 58). About muamalah, Allah says “... And witness with two witnesses of the men among you ...” (QS. Al-Baqarah: 282). In the matter of international relations, God says “God does not forbid you to do good and is fair to those who do not fight you because of religion and do not (also) expel you from your country. Surely Allah likes those who act justly” (QS. Al-Mumtahanah: 8).

In addition, there are many other holy texts that can be used as a guide and guide in society and nation, both contained in the Qur’an, the Prophet’s Hadith, *Ijma*, and *Qiyas*. The Islamic system actually has an internal readiness to develop. And I am convinced that I am right to say that Islamic law contains in full all the principles that are prerequisites for progress. Through *ijma* and *qiyas* which are part of the *ijtihad* method, Islamic law continues to be developed by thinkers of Islamic law while still referring to the spirit of the Qur’an and the Hadith of the Prophet. In other words, if there is a case or problem that occurs in human life, while the legal provisions are not regulated in the Qur’an and the Hadith of the Prophet, then thinkers of Islamic law are required to make improvements to Islamic law (*ijtihad*) while still referring to the spirit Al-Qur’an and Hadith of the Prophet, so that cases or problems that occur in society can be resolved and solved according to Islamic law.

However, this requirement only applies to problems outside the field of worship *mahdallah*. And for the latter, the Qur’an and the Hadith of the Prophet have set them perfectly and there is no need for improvements or changes. The basis is a hadith that reads: “Whoever makes things up in our religion (*ibadah mahdallah*) what is not in it, then what is held is rejected” (Al-Bukhari, 1998). From this hadith, the *fiqh* scholars conclude that the main law in matters of worship (*mahdallah*) is *haram* unless there is a text of the Qur’an and the Prophet’s Hadith that commands it.

Wasathiyah

Islamic law takes the middle way, balanced, harmonious, not extreme left or right. Islamic law never separates the interests of the world from the hereafter or between physical and spiritual life. This is what makes Islamic law always balanced, not one-sided, not only at one extreme pole, and ignores the other pole, not rigid but not too flexible, so that adherents of Islam are referred to as the middle people (*ummatan wasathan*).

The characteristics of Islamic law are different, for example, from the teachings of other religions. The Jews, for example, looked at the disgust of menstruating women. They don’t want to eat with them, don’t want to drink with them, and don’t want to be at home with them. The Islamic law only forbids sexual relations with them, but does not prohibit hanging out, eating, drinking, and sleeping with them. The Jews, for example,

cleaned the cloth that was affected by unclean by cutting the cloth and removing the part that was affected by unclean. Islamic law tells Muslims to clean cloth that is exposed to unclean matter properly without having to cut and throw it. Jews are forbidden to eat some good food; Christians justify everything, even pigs. However, Islam justifies the good and forbids the bad.

Harakah

Harakah, as the basic character of Islamic law, means dynamic, moving, and developing. Islamic law is not static, stagnant, stopped. He will always move, and every time people need legal solutions, then Islamic law will answer them. Even though the Qur'an was revealed about 15 centuries ago and even the Prophet Muhammad died at the same time, Islamic law originating from the Qur'an and the Prophet's Hadith remain actual and in accordance with the times. Why is that? Because not all provisions of Islamic law are outlined in technical details. There are times when the Qur'an and the Hadith of the Prophet only mention general principles, while the detailed rules are left to the scholars through *ijtihad*. The Qur'an and the Hadith of the Prophet only mention global principles and general principles, especially those relating to social-social problems. These general principles and general rules make Islamic law able to meet the needs and dynamics of the times and society. It's what is meant by the characteristics and basic character of Islamic law that is *harakah*.

Global principles and general rules of the Qur'an and the Hadith of the Prophet, for example in the fields of law, economics, and government, such as justice, equality, and deliberation can be elaborated (expanded) into technical-operational rules in accordance with the dynamics and needs of the people. The task of developing Islamic legal principles into technical-operational rules is assigned to Islamic legal thinkers or authorized institutions. For example, in matters of state administration, the Qur'an clearly and establishes the principles and principles of *Shura*. The principle of *shura* is a general rule that is constant and unchanging and must forever be upheld in every dimension of space and time. The technical implementation is left to the dynamics of the times and the changes that occur therein. Likewise, the principle of fairness, which must be used as a principle by the judiciary. The problem is, are all Islamic laws flexible so they can be developed and expanded? Abdullah Nashih Ulwan in his book "*Al-Islam Syari'at al-Zaman wa al-Amkan*" answered it by classifying the terms of *syara* 'into three: (1) Provisions of Islamic law that can receive development, legal provisions that closely related to socio-economic principles and principles, judicial mechanisms, the economic system, and administrative and constitutional issues. Islam establishes such problems through general rules and general principles (*kulli*). The details, elaboration, and operational techniques can be adjusted to the best experience humanity has ever done. (2) Provisions of Islamic law that are subject to development, provisions that are not clearly stated in the text of the holy book (*sharih*). Problems such as this are subject to the thought of scholars and experts who are qualified, who have the character of piety and color, intelligent, and have the authority to do jihad. It is they who can stipulate this type of law, for example, regarding old age guarantees for employees and laborers, service fees, family benefits, about the law of protection of intellectual property rights and other copyrights, and so forth. (3) The provisions of Islamic law that are constant and unchanging, the problems that have been mentioned in the texts of the scriptures that are firm (*texts of qath'i*) and do not allow any more opportunities for change. The provisions of this type include matters of faith, worship *mahdlah*, forbidden usury, adultery, stealing, killing, gambling and liquor, inheritance law, and so forth. Thus, the

flexibility of Islamic law only covers the first and second *shari'ah* provisions. The third type must not be changed and tampered with, expanded, or reduced.

The special characteristics of Indonesian Islamic law become one of the discussions of Islamic legal philosophy considering that Indonesian Islamic law has superior characteristics and makes it recognized as a fantastic supernatural legal product. The experts who investigated the basic characteristics of Indonesian Islamic law concluded at least six types that characterize Indonesian Islamic law: (1) Islamic law as humanitarian law, (2) humanity as a legal principle, (3) core Islamic law, (4) based on ethics or morals, and (5) based on social.

Islamic law as humanitarian law

The element of humanity contained in Islamic law is so clear and firm. There is no Islamic law that is imposed on humans beyond the capabilities and abilities of humans as “human”. Because Islamic law is established by God, the creator of man, who certainly knows the strengths, weaknesses, strengths, and weaknesses of humans, it is impossible for God to deny the nature of our humanity. Because Islamic law is established by God the All-Knowing of human development and times, it is certain that Islamic law can develop, dynamically, and change according to human needs and development. That is the human side of Islamic law.

The Word of God clearly confirms this: “Allah does not burden mankind but according to his ability” (Q.S. Al-Baqarah: 286). Other verses that are almost the same are also found in Surah Al-An’am: 152; Al-A’raf: 42; Al-Mu’ minun: 62; Ath-Thalaq: 7; and Al-Baqarah: 223. Because Islamic law upholds human values, the values inherent in the nature of humanity have a place in Indonesian Islamic law. Human needs such as food, drink, interaction, marriage, family, community, state, and others, are all regulated and have a place in Islamic law. Even human nature is different from one another and tends not to get the same broad corridor in Islamic law. Islamic law does make restrictions and restrictions, but the restrictions are intended for happiness and human well-being, both as individuals and as a society. Humans are prohibited from adultery, gambling, intoxication, wrongdoing, persecution, stealing, breaking promises, and others; all aim to achieve the true happiness of humanity.

Humans as the principle of law

Evidence that humans are used as a principle of law is that Islamic law contains legal instruments that give such great and high attention to humans; maintain everything related to humans, ranging from soul, reason, spirit, about faith (*aqidah*), *ibadah*, *mu’amalah*, *jinayah*, *siyasah*, *munakahah*, to the problems of later life in the afterlife. Islamic law does not only pay attention to humans as individuals but also humans as members of the nation’s community. Indeed, it is human beings who are the source of Islamic law.

Therefore, it is illogical and unrealistic if there are people who say that Islamic law does not regulate or respect human rights. Islam has placed fundamental rights and human rights in the Qur’an and the Hadith of the Prophet long before the United Nations (UN) established a declaration of human rights (The Universal Declaration of Human Rights).

The essence of Islamic law

A concern of Islamic law that is so great for humans also appears in the core of Islamic law, which is nothing but nurturing people and glorifying them. Islamic law, whether about commands or prohibitions, in general, is to care for and glorify humans and prevent interference with human glory. Because the core of Islamic law lies in efforts to protect people, Islam has never based its orders on coercion, nor has it eliminated the independence, which is the essence of humanity (Bisri & Husni, 2020; Husni, 2019; Husni, Bisri, Tantowid, Rizal, & Azis, 2020; Manshur & Husni, 2020).

Based on ethics and morals

One of God's gifts to humans is *hanief* and *dlamier*. *Hanief* is a human inclination towards goodness, whereas *dlamier* is a conscience that also tends towards goodness. *Hanief* and *dlamir* are what gave birth to human morals. It is this moral that underlies, directs, and guides humans in obeying the law. This conscience is what invites humans to obey the rules and laws. The surging inner feelings move people to believe and strengthen their creeds, improve their deeds, and cleanse their morals. It is also the subtle inner voice that whispers into our ears the soft and beautiful words that are heard. *Dlamier* is what orders and prevents.

Socially-based

Special characteristics of Islamic law are also seen in fostering the community or social based. Implementation of Islamic law in fostering the community of which contained in the *fiqh mu' malah*, *jinayah*, *qadlayah*, and *siyasa*. Islamic law, besides giving attention to humans as individuals, also regulates the public sphere of the *ummah*. Therefore, it is not true that people say that religious rules are limited to individuals and do not touch the public sphere. Restrictions on religion only to individual spaces may apply to other religions. However, Islam is a religion that governs all dimensions of human life, private and public, the world, and the hereafter.

In conducting guidance to the *ummah*, Islamic law focuses on the moral or ethical aspects. This character is a mirror of one's obedience and obedience to the rule of law. That is why the main mission of the Prophet Muhammad was to try to improve the morals of the people.

IV. Conclusion

The nature and characteristics of Indonesian Islamic law are philosophically in harmony with the world view and attitude of Indonesian human life. Islamic law in Indonesia and the Indonesian people have the same characteristics, trying to eliminate difficulties, narrowness, and shortsightedness. Islamic law in Indonesia and the Indonesian people tend to be open, tolerant, and respectful of God's creatures. Islamic law in Indonesia and the Indonesian people have the same view about the burden of life. Humans should only be burdened according to their abilities. Islamic law in Indonesia and the Indonesian people tend to have the same perception about graduation, step by step. Both of them always prioritize mutual benefit. Islamic law in Indonesia and the Indonesian people both want to bring benefits to as many people as possible. Islamic law in Indonesia and the Indonesian nation has the same commitment, the realization of equitable justice. The worldview both rely on efforts to prevent crime from happening. Human values, humanization, ethics, morals, social welfare are the core of Islamic law that wants to be realized in Indonesia.

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