Response of Islamic Law in Addressing Change Law in Contemporary Society

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Abstract

Talking about law changes, our minds will automatically be focused on the condition of the community experiencing the legal problem itself to help find a solution. That the relationship of Islamic law with social change is reciprocal, meaning that Islamic law can affect social change, and vice versa social change also has implications for changes in Islamic law. The change of law due to social change shows that islamic law is dynamic and able to adapt in accordance with the development of the times and social change to contemporary society.

Keywords: *Islamic Law; Law Change and Contemporary Society*

Introduction

Islamic law is a very important part of a Muslim's life and islamic teachings. The study of Islamic law becomes a study that will not be separated from the study of Islam itself. Joseph Schacht, for example, says that Islamic law is an overview of Islamic thought, the most typical manifestation of a Muslim's way of life and is the essence and essence of Islam itself (Joseph Schacht, 1964). Therefore, the study of Islamic law has been a study that has existed since the early period of Islam and continues to this day.

Islamic law, in various Western literature, is translated using the terms *"Islamic Law"* and *"Islamic Jurisprudence"*. Western jurists generally view Islamic law as a law that rejects positivism. Coulson, in *"History of Islamic Law",*says:

"The classical exposition describes the culmination of a process in which the specific term of the law is expressed as god's irrevocable will. As opposed to the legal systems based on the human mind, this kind of law of God has two main specific characteristics. First, it is an eternal and eternal system, which is not easily modified with various legislative authorities. Second, because of the various differences that make up the Islamic world, Islamic law as God's law represents a standard of uniformity against various legal systems that would have unavoidable consequences if the law was a product of human reason based on the local situation and the needs of a particular community"(Coulson, 1964).

If the law is a norm or rule enforced by a legal institution, then the law will also change if the norms in society change. It can be reiterated that this is related to social change. Moore incorporates into the definition of social change with various expressions regarding structures such as norms, values and cultural phenomena. Clearly, such a definition all-encompassing. Other definitions also cover a very broad field; social change is defined as variation or modification in every aspect of social processes, social patterns and social forms, as well as "any modification of established interconnectual patterns and standards of conduct (Coulson, 1964).

Thus what about Islamic law. Can Islamic law also easily change according to the changes that occur in society? As we know Islamic law is a number of rules that are based on the revelation of Allah and the Sunnah of the Apostle both direct and indirect, which regulates human behavior that is recognized and believed and must be done by Muslims (Fathurrahman Djamil, 1997). In addition, Islamic law must also have the power to regulate both politically and socially. What is interesting in the modern context regarding the classic liberal theory of law, is the fact that in Islam, the law was invented and not made. This is certainly a distinction popularized by Hayek and it is amazing how the Islamic concept of law is very similar to Hayek's jurisprudence (Norman Barry, 2002).

Islamic law, as J.A. Williams wrote, is usually known as fiqh (which used to have the meaning of language of understanding) often also called sharia which originally meant the result of deeds. The naming of the term fiqh indicates the totality of its scope in life, so its application in all aspects of life should be considered as an effort to understand religion itself (Sudirman Tebba, 2003). Thus, Islamic law*(fiqh, shari'ah)*not only serves as a secular law, but also serves as normative values. It is theoretically related to all aspects of life, and it is the only social institution in Islam that can give legitimacy to the desired changes in the alignment between Islamic teachings and social dynamics(Sudirman Tebba, 2003).

Community as a form of association consisting of people who come from various communities or societies that are geographically adjacent. The boundaries of a society are not always easy to specify, because inter-community relations make it difficult to say why one community is abandoned and the other is entered. But in any case, differences or limits, to some extent can be withdrawn. Because all societies are governed by law, the movement of one legal jurisdiction means, to some extent, the movement from one community to another. It has become an inevitability that a society is always experiencing changes that are often followed by changes in mindset and values (Soerjono Soekanto, 1984). Social change sooner or later always wants change and renewal in various fields, including laws and regulations that are important aspects of human life (M. Amin, 1975).

Research Methodology

The design of this research is Literature Review or library review. Literature review (literature review, literature research) is a study that critically examines or reviews the knowledge, ideas, or findings contained in the body of academic-oriented literature, as well as formulating its theoretical and methodological contributions to a particular topic, Cooper (2010).

The nature of this research is descriptive analysis, namely regular decomposition of data that has been obtained, then given understanding and explanation in order to be well understood by readers.

Discussion Results

Understanding Islamic Law

The term 'Islamic law' is not found in the Quran. Terminology that is often used as a equivalent word of Islamic law is *al-fiqh, al-shari'ah* or *al-syara'*, and *al-hukm.* In Western studies the *term* commonly used is 'Islamic Law' which means Islamic law. In the explanation of the word *'Islamic Law'* is often found the overall definition of the book of Allah that governs the life of every Muslim in all aspects. From this definition it appears that Islamic law is closer to the meaning of al-sharia (M. R. Q Ji, 1966). The word Islamic law in Indonesian terms is presumably translated from English.

In the study of ushul fiqh, al-hukm is usually interpreted as the khitab of Allah that regulates the deeds of the mukallaf either in the form of iqtida (command, prohibition, advice to do or leave something), *takhyir* (ability to choose between doing or not doing, or *wad'* which is a provision that stipulates something as a cause, condition, or barrier / mani' (M.S. Al-Khin, 2000).

The understanding of Islamic law is further interpreted as Islamic sharia which is a system of rules based on the Quran and sunnah of the Apostle regarding the behavior of mukallaf recognized and believed, and mjengikat all its adherents (E. Iryani, 2017).

Hasbi As-Shiddieqy provides the definition of Islamic law as a collection of the efforts of legal experts to establish sharia on the needs of the community (T.M. H. Ash-Shiddiqey, 1990). The definition given by Hasbi is closer to al-fiqh than to shari'ah (H. Hilal, 2003).

M. Thahir Azhary holds that Islamic law has five basic properties namely;first, dimensional. Second,fair. Third,individualistic and societal. Fourth,comprehensive. Fifth, dynamic. These five basic traits show how true islamic law is (M. T. Azhary, 1987). Full dimensional covering all aspects of life. Islamic law is also fair in relation to the nature of the whole. Individualistic and societal means that the law has validity for both individuals and communities.

Islamic law is defined as a sacral and holy teligius law, which is because it is eternal. How does such a law face the challenge of increasingly complex change? This pundamental question is certainly asked in an effort to display the problem of adaptability of Islamic law in answering the challenges of contemporary discourse (Amir Muallim and Yusdani, 2001). Changes that occur in society are common symptoms. In the sense that the change will be about social symptoms called the law. So, consciously or not, the changes that occur in social and cultural praxis will affect the values related to the law (Moeslim Abdurrahman, 1995).

Dynamics of Islamic law

The beginning of the history of islamic law or fiqh is a dynamic and creative force. This can be seen from the emergence of a number of legal sects that have their own patterns according to the sociocultural and political background in which the legal sect grew and developed (Seyyed Hossein Nash and Oliver Leaman (Ed), 2003). In the classical fiqh paradigm there are five principles that allow Islamic law to develop following the times: 1) The Principle of *Ijma';* 2) the Qiyas Principle; 3) *Maslahah Mursalah Principle;* 4) The principle of keeping *Urf';* and 5) the change of the law with the change of time. These five principles clearly show how flexible Islamic law is (Taupiq Adnan Amal, 1989).

With the passage of time, the dynamic and creative development of Islamic Law in the early days then manifested into sects on the initiative of some well-known jurists, but with the crystallization of these sects, the right to berijtihad began to be restricted and in turn declared closed. A kind of gradual

consensus that establishes itself more or less means that from then on no one can claim that he has the qualifications to carry out absolute ijtihad and that all future activities are simply adjusted.3 So theoretically, ijtihad is not declared closed but his qualifications forged in such a technical way and with the idealization of past achievements have resulted in ijtihad being out of human reach.

Dynamism as a characteristic of Islamic law indicates the ability of the law in accommodating, responding and answering any problems that are not contained in the Qur'an and Sunnah as the logical consequences of inevitable social change. The change in Islamic law is an undeniable reality, the development of all aspects of people's lives as above, this has brought a great influence on a social change of society.

One aspect of the change is islamic law which is considered as a traditional religious heritage, in the social field it is often seen as no longer meeting the needs of the times. Therefore, the reform of Islamic law is an inevitability. The social changes faced by Muslims in the modern period have caused a large number of serious problems related to Islamic law, but the method in the legal istinbath developed by the reformers of Islamic law to answer these growing problems, seems to have not been able to solve what is said to be the problem of the people. Thus the study of the dynamics of Islamic law is very necessary. In order to dynamic Islamic Law can be the answer to the challenges of social change that exist and occur.

The socio-cultural development of man that continues to change so rapidly, it grows and develops so that it leads man to various changes in almost all joints of his life. If one used to have to travel to perform hajj for three to four months from Indonesia to Mecca, then now in just about eight hours we have got there. The problem is certainly not that simple, there is a limit of miqat that must be passed by pilgrims make them wear ihram clothes on the plane, while others have worn it before boarding the plane in their respective countries.

The condition of the society that continues to grow and develop demands Islamic law to bear a heavy burden in its role as a problem solver , but with the Qur'an and As-Sunnah containing global evidences make all problems can be answered by Islamic law, of course with the touch of the hand of scholars (scholars) to dig the law of both (Peunoh Daly, 1982).

The elastic parts of the Islamic legal system relate to problems that are "furu'" in this case usually not directly related to the problem of aqa'id. It has a special cirri that is the absence of evidence and nash sharih that sets a law on a problem. The easiest example is about *ta'zir*. *Ta'zir* is a form of open and dynamic punishment that allows the qadhi (judges) or rulers to have the authority to act in order to overcome various moral and social decadences. It's just that this form of denial should not be to match the hudud sangsi. This form and type of *ta'zir* is the domain of ijtihad for mujtahids in establishing it.

In addition, of course, new things related to the unprecedented problem is to be part of the discussion of Islamic law to continue to develop following the dynamics of society. In fact, long before the emergence of modern problems in society, Islamic law has given a legal stage that gives an authority for its people to use its ratio in weighing every law that is considered new by them. The meaning is that Islam comes in accordance with the ratio and faith for its adherents.

From this it is clear that Islamic law is very concerned about various basic human habits, both the field of muamalah, worship, jinayah, siayasah and others. He lacks rigid, hard and pushy dogma. It gives the general rules that must be exercised by mankind. Thus, what is expected of Muslims is the growth and development of the process of ijtihad which according to Iqbal is called "The principle of motion in Islam" Ijtihad is an active, productive and constructive theory". Islamic law provides an adequate place

for every scholar to berijtihad in order to develop and *beristidlal* in legal issues that do not find the existence of *saheeh nash* there.

Therefore, Islamic law becomes relevant all the time in accordance with the problems of the people. Islam is a teaching that is sourced from God, *shalih likulli zaman wa makan*, because it is the nature and behavior of Islamic teachings that are relevant and realistic throughout the history of world civilization, starting the opening of the early pages of life, to the final episode of the long journey of this life. All laws, both in the form of commandments and prohibitions, recorded in the texts of sharia are not meaningless. But they have a purpose and a purpose, in which God conveys certain commandments and prohibitions on those purposes. By the scholars they term it with Islamic Law al-sharia (Sharia Objectivity) (Juhaya S. Praja, 1995).

Addressing Changes in Islamic Law

In the face of legal problems that often arise in religious life, people are required to be wise as well as how to deal with the religious doctrines contained in the scriptures and other sources of religious authority fairly, so that the doctrines remain of proper relevance to the dynamics of an ever-changing society, and always functional to solve the problems of society to then be adopted into a more modern and *up to date* system.

Answering the challenge of modernity is a jargon that is implied and agreed behind the various products of Muslim thought in general and in the field of law in particular in the last decade after the Muslims were trapped in cheesemudan and taqlid long enough after the imams of the sect. In the 20th century, more and more efforts to reform islamic law thought both by Muslim scholars and by orientalist scholars (Syamsul Anwar, 2002). The renewal of Islamic law is always in line with the development and renewal of thought in the Muslim world with regard to the holy text (A. Khudori Sholeh (Ed), 2003) and discussing topics more related to philosophy or thought.

This contact between eastern and western civilizations had an impact on social changes (Soerjono Soekanto, 1984) which later gave birth to a large number of new problems for Islamic society, especially with regard to the relevance of religion to the modern era. These changes gave rise to many new social and cultural symbols that were explicitly not possessed by religious symbols that were considered well-established. So that various aspects of people's understanding of religious doctrines are questioned again, even sued by reformers (Martha Mundhy, 1998).

Social change, it is one must definitely happen in a society. It should be noted, that the changes that occur must affect the social life of a community. with regard to this change, sociologists give some points of unequal emphasis between one and the other. However, whatever emphasis the sociologists put, they have agreed that social change is affecting and changing the order of the social system that has been assumed to be the standard sestuatu previously by a society (Zulham Wahyudani Dan Raihanah Hj Azahari, 2015).

One aspect of this understanding is that Islamic law, which is considered a traditional religious heritage, in the social sphere, is often seen as no longer meeting the needs of the times. Therefore, the reform of Islamic law is an inevitability. The social changes faced by Muslims in the modern period have caused a large number of serious problems related to Islamic law, but the method in the legal istinbath developed by the reformers of Islamic law to answer these growing problems, seems to have not been able to solve what is said to be the problem of the people. Thus the study of the dynamics of Islamic law is very necessary. In order to dynamic Islamic Law can be the answer to the challenges of social change that exist and occur.

The provisions of the law in principle are fixed and final, do not accept and or deny renewal and change. The provisions of Islamic law that have been explained and determined by the Qur'an and Sunnah in a definite, clear and detailed. The final legal provisions such as this are no longer the area of ijtihad field (Abdullah Nashih 'Ulwan, 1992). In addition, there are also provisions of the law that are not fixed or final, and can change, such legal provisions can be distinguished into two kinds: first, the law that is dug up from the evidences of zhanni but changed dynamically. Second, the law produced through ijtihad as a result and response to the development of time(Abdullah Nashih 'Ulwan, 1992).

From the explanation above shows that both sources of law, the Qur'an and Sunnah there are texts that are partly qath'i (axiomatic) and some are zhanni (hypothetical). It is in these texts that the intervention of the human mind is possible to make interpretations and adjustments to the demands of social change through an activity called ijitihad. In fact, not only the texts of zhanni qath'i texts as mentioned above can be changed. This is where the flexibility of Islamic law lies. And also the reciprocal relationship between Islamic law and social change. Therefore it is not an exaggeration when Islamic Law is assumed to be a dynamic law and always relevant for every age, circumstance and place (Moses, 1958).

The real condition of today's society is faced with two choices, namely sticking to the norms of religious law while subjugating the reality of life, and the need for a new law before the authority of religious law, or stripping off religious law because it no longer functionally accommodates the needs of the law and the sense of justice of society. Especially after the Islamic world touches and interacts with westernization through colonialism that the western world to the Eastern World, especially the Islamic World.

Human life in society requires an orderly situation in order to live a peaceful, peaceful, and prosperous life. The need for order is the most fundamental requirement for the creation of an orderly society. While order itself is the most basic and first goal of all laws (Mochtar Kusumaatmadja, 2006). This is an implication of a fact of life that man was created by Allah SWT coexisting with other human beings.

Such historical reality shows that how dynamic the course of Islamic law is. This is because of the harmony between the flexibility of Islamic law and the creativity of Muslims (mujtahidun) who are considered to have the authority to berijtihad. These two things are illustrated by the diversity of understanding in Islamic law, in line with the changing society and the evolving conditions of the times (Satria Effendi M. Zein et al., 1991).

On the other hand, various changes and developments of human pradaban in the current era of globalization, many issues are not yet reached by Islamic law. Therefore, one of the answers to these problems is to re-actualize, contextualize, and reinterpret Islamic teachings. This understanding implies that the current interpretations of Islamic teachings come from adapting them into past situations. Therefore, such interpretations have now been severely squeezed by historical and civilizational burdens. If the reformers today want to re-actualize and contextualize Islamic law there must be courage to release the burdens of history and culture in order to find new alternatives that are more responsive and contextual (Zarkasi Abdussalam and Syamsul Anwar, 1998).

It is a very natural and normal thing when a group of people experience what is called change and development. Because change is evidence and characteristic, that society exists and lives. The change in society that occurs can be in the form of changes in social order, cultural order, economic order and so on. This means that the changes that occur are not only partial, in certain aspects, but are comprehensive, covering all aspects of people's lives both materially and immaterill. Therefore the definition of social change becomes very broad, but in general it can be widely understood.

Legal Changes in Contemporary Society

The change in the law in contemporary society indicates that the change in law has become a necessity that must be adapted to the development of the times at this time. In order to keep the rule of law can continue and be accepted by all members of the community, the existing rule of law must be appropriate and must not be contrary to the principles of justice of the community. However, in one respect, the law differs from other social rules, namely that the arrangement of its provisions can be imposed in an orderly manner. That is, coercion to ensure the structuring of the provisions of the law itself is subject to certain rules, both regarding the form, manner, and means of implementation (Mochtar Kusumaatmadja, 2006).

The rules of religion and the rule of law which is derived also from the rules of the social is an umbrella of life in society.People who are not civilized are people who do not have the rules of religion and the rules of the social , or the people who deny or deviate from the rules are. By because it It is very necessary to develop the law so that order in society can be realized . Religious rules and legal rules that are derived from social rules are the umbrella of life in society. Un civilized society is a society that has no religious rules or social rules, or a society that denies or deviates from both rules. Therefore, it is necessary to develop laws so that regularity in society can be realized.

Legal development that includes efforts to build a legal order must be done continuously so that the law can play its fungasi as a guideline of conduct (function of order) in living together that is imperactive and effective as a guarantor of justice in society. The signs of the growing recognition of the importance of legal functions in development, show that we cannot avoid the impression that in the midst of the busyness of this development there is a lethargy or lack of trust in the law and its usefulness in society (Mahfud MD, 2006).

The term change of law in the community here to indicate that a change in legal issues in the community has occurred in order to respond to the needs of the community itself. One of these social needs relates to the law, and it is strongly related to two aspects of legal work in relation to changes in the law in society, namely (1) the law as a means of social control so that the community behaves in accordance with the expectations of the actual law; and (2) law as a means of engineering control to achieve the rule of law or the state of society in accordance with the ideals and changes desired (Sodjono Dirdjosiswono, 1983).

In the Islamic context, the renewal of the law in order to meet the demands of this social need is processed with conditions and situations and with the demands of the times. This is because the norms contained in the books of fiqh are no longer able to provide solutions to new problems that have not appeared at the time the books of fiqh were written by the fuqaha. In such cases a legal ijtihad is required, and one of its forms is the giving of a fatwa. Various questions concerning various life problems are presented to the scholars or mufti, either verbally or in writing, and the cleric or mufti must answer them. Moreover, if no one else is able to answer it other than him, for the time it takes. This answer of course departs from ijtihad. Thus, fatwas appear to respond to reality.

Islamic Law Answers People's Demands

The law that develops in society is not a static law but a dynamic law. Indeed, the legal system is not just a set of static rules but a constantly changing reflection of the development, especially the diversity of social characteristics that live in society both traditional and modern society, both rapid change and slow change. In line with the idea that the law is reflective of the diversity of social characteristics, then no law does not change and that change is always the product of conflict (Sabian Uthman, 2009).

The demands of social change have an impact on the existence of the legal system that has been in the right place. The change of the law by circumcision, natural, and through natural selection undergoes changes by itself, not a matter of law inevitably, like or dislike, but back to the issue of change itself. If the law does not change then there will be many obstacles both directly facing the sense of community justice and law enforcement issues. The prosecution that occurs in the legal self that must make restorations to its existence in the community will have different consequences on the changes in the law to be made. As long as the law changes responsively and follows the rhythm of the law that lives in the community, then the law will always be in harmony with people's lives.

Islamic law efforts in answering problems that occur in the midst of society requires the existence of ideas or thoughts to be diimolementasikan in the life of the Muslim community. Therefore, the orientation of Islamic legal thought in answering contemporary issues, put forward by al-Qaradawi with the term Fiqh Jadid, characterized the following fiqh methods (Abdul Manan, n.d.) :

1) Fiqh al-Muwazanah (Fiqh balance), the method of making legal decisions, at the time of dilemma between mas-lahat and mafsadat, or between good and evil. According to him, a small benefit can be done to obtain greater benefit, or temporary damage can be done to maintain permanent benefit, even great damage can be sustained if by eliminating it will cause greater damage. We get in the product of Islamic law, a balance that is juxtaable between the benefit of people who are worldly and ukhrawi, as in social life there are benefits that are fardi (individual) that must be maintained and respected, in addition to the benefits that are jama'i (collectible-tif), where there can be no inequality between the two. It is asserted that the product of Islamic law always strives to combine and harmonize between the benefits of human beings above, which are very diverse and often opposite to each other, so that the products produced are fair, moderate and acceptable (accepted) by human common sense. Worldly life in the perspective of the Qur'an has a high position, but this does not mean it can be treated indefinitely, on that basis we get a lot of products of Islamic law that are prescribed in order to maintain the benefit of ukhrawi life, so that the balance between the two can be achieved without causing turmoil and confusion between the two. As the product of Islamic law seeks to strike a balance between worldly and ukhrawi benefit, it also seeks to balance the benefits of the world itself, for example in the case of theft. On the one hand there is benefit for the thief in the form of utilization of the stolen property, but on the other hand there is a greater benefit, namely the benefit of the owner of the property in addition to the benefit of the peace of the soul and so that there is a sense of security among mankind. On that basis the Qur'an makes the practice of theft a crime that must be severely punished.

2) Fiqh Waqi' (Fiqh reality), a method used to understand the reality and problems that arise before the people, so as to apply the law according to the demands of the times. The product of Islamic law should have shalahiyah to be enforced at every age, condition and place, as it should also be comprehensive for all aspects of human life, and such is the reality of the product of Islamic law. A concept of law that never existed that can match it, both before and after the Qur'an was revealed, as there is no other legal product that is more comprehensive and perfect than it, this all proves the truth of the Qur'an that he is a kalamullah and the prophet who brought him is a messenger of God (Ali Ahmad Muhammad Babikr, n.d.).

3) Fiqh al-Aulawiyat (Priority Fiqh), a method for establishing a system in assessing a work, which should take precedence or end. One of them is how to put Ushul ahead of furu', put the bonds of Islam from other ties, science sebe-lum do deeds, quality over quantity, religion of the soul and put tarbiyah before jihad.

4) Fiqh al-Maqasid al-Shari'at, this method is intended how to understand the shar'i nashs juz'i in the context of maqasid al-shari'at and bind a law with the main purpose of establishing the law to protect the benefit of all people, both the world and the hereafter.

5) Fiqh al-Taghyir (Fiqh change), meto-de to make changes to the system of un-Islamic society and mendo-rong society to make changes. The five orientations of Islamic law are very flexible, which

emphasizes the principle of ease and leniency, judged by many experts as the original idea of Yusuf Al-Qaradawi in his efforts to reform the law, especially in an effort to address the changing progress of today's times. In Fiqh Waqi' for example, al-Qaradawi (1997) explains that fiqh waqi' is knowledge of its true reality, both beneficial and detrimental. This reality is important to understand because, according to him, an understanding of reality will be a consideration of how we relate to reality: will it be accepted or will we reject it? As long as reality provides maslahat values to society can certainly be used as a foothold in the development of sustainable Islamic law.

Conclusion

Law as a tool to change society, but the law can also lag far behind the changes in social change in society if it turns out that the law can not meet the needs of the community at a certain time and place that can hinder development in other areas. The lagging of the rule of law can also result in disorganization, which is a situation where the old rules have faded, while the new rules in lieu have not been drafted or established.

The presence of Islamic law provides solutions to the problems of contemporary society to be more prudent and wise to see the changes in the law that occur. Therefore, Islamic law is actually Islamic law is believed to have a purpose for the benefit of the people in understanding Islamic law and or strengthening Islamic law and maintaining Islamic law. One of the characteristics of Islamic law includes; elasticity, moderate, and conformity of Islam with human nature is a concrete form of Islamic truth as a universal rule that can be used when, where, and under any conditions

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