THE CONTRIBUTION OF ISLAMIC KINGDOMS IN THE DEVELOPMENT OF THE ISLAMIC JUDICIARY IN INDONESIA: HISTORICAL LEGAL APPROACH ANALYSIS

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Abstract: Islamic kingdoms in Indonesia has played the significant roles in spreading and enforcing Islamic law. Each kingdom has a judge from an Islamic school in the Islamic judiciary process. If the cases were difficult to adjudicate, the court invited other Islamic scholars from other kingdoms to give their opinion on solving the cases. Islamic scholars have habitual writing books used for further Islamic scholars. Although amongst Islamic kingdoms have share their experiences and knowledge, the implementation of Islamic law was still different, even though tended to find their way to justice. For instance, in family law case the verdicts could be different, considering the customary law established in one kingdom. This article has used historical legal approach to analyze the data from historical documents in Indonesia. The Islamic court in Indonesia has related to the court in the time of Islamic kingdom, including Islamic family law. However, the recent Islamic court has more developed than in the time of Islamic kingdom in Indonesia. Thus, the 4.0 era has also affected the judiciary process.

Keywords: Contribution Of Islamic Kingdoms, Islamic Judiciary In Indonesia, Historical Legal Approach

I. INTRODUCTION

A historical legal approach is an approach to understanding the continuity of legal activities that occurred in the past in specific areas. In this article, the author will review the Islamic judiciary activities during the Islamic kingdom in Nusantara (the Indonesian archipelago). In the spread of Islamic law, there were relationships between one region and another caused by the references
similarity of fiqh books from the Shafi‘iyah (Imam Al-Shafi‘i followers). The Shafi‘iyah was brought by Muslim traders who spread Islam, and Shafi‘iyah teachings were more dominant than other sects at that time.

Nuruddin ar-Raniry, a scholar who lived in the 17th century AD, wrote a book on Islamic law with the title Sirat al-Mustaqim (The Straight Path) in 1628. According to Hamka, his book was the first Islamic law book distributed throughout Indonesia by Sheikh Muhammad Arsyad al-Banjari, who became the Mufti (an Islamic jurist qualified to issue a nonbinding opinion/fatwa) in Banjarmasin. The Sirat al-Mustaqim description was expanded and extended in the book of Sabilal Muhtadin and used to guide Muslims in resolving disputes in the Banjar Sultanate and other regions. In the sultanates of the Palembang and Banten regions, several books of Islamic law were published, which were used as references for Muslims in solving various societal problems. Each of the books was written by Sheikh Abdus Samad Nawawi al-Bantani. Islamic law was also followed and implemented by Muslims in the kingdoms of Demak, Jepara, Tuban, Gresik, and Mataram. This statement can be proven from the work of the poets who lived at that time, namely Kuturagama, Saninatul Hukum, and others.

The similarities in the implementation of Islamic law before the Western colonial period lay in the implementation of civil law. In contrast, in implementing criminal law, there were still various decisions.

In general, Islamic law issues seem too broad to be discussed. Therefore, the author narrowed the topic by only discussing the practice of Islamic criminal law judiciaries carried out by Islamic kingdoms before Western colonialism. The Islamic kingdoms discussed were very influential in implementing Islamic law in Indonesia.

Scientific work requires a basis for certain research methods because every scientific writing should be objective. The thoughts, opinions, and discussion material must be logical, systematic, and follow existing data and facts. In compiling this paper, the author used the library method. The reference materials were obtained from laws, books, literature, dictionaries, and encyclopedias related to the discipline of history and the topic discussed.

Islamic law or sharia has three meanings: First, as the whole religion brought by the Prophet Muhammad. Etymologically, the word sharia means the way that leaves an imprint on the water. Religion is like water which is the source of life. ‘A. Yusuf Ali called sharia the right way of religion.

Second: the whole nushûsh (texts) of the Qur’an and Sunnah are legal values derived from Allah’s revelation. Islamic studies about the verses of al-ahkâm and the hadiths of al-ahkâm are limited in number. ‘Abd al-Wahhab al-Khallaf, for example, classified legal verses relating to the family in 70 paragraphs, 30 on criminal law, 13 on jurisdiction and legal procedures, 25 on international law, and ten on economics and finance.

Third: the experts’ understanding of the law that comes from God’s revelation and the results of Ijtihad (independent reasoning by an expert in Islamic law) based on God’s revelation. This understanding is called fiqh or the understanding of Fuqaha’ (an Islamic jurist) in specific issues concerning the actions of individual humans as Mukallaf (religiously responsible or accountable). Fiqh is an understanding of texts. Because it involves thinking and analysis, there is more than one understanding of the verses derived from revelation. Islamic scholarship in law has given rise to various schools called mazhab of fiqh.

As ad-dîn (religion), Islamic Sharia includes the aspect of belief and practice in religion. However, according to the understanding of the Fuqahâ, this term is explicitly used to indicate legal

2 Soerjono Soekanto, Introduction to Legal History, (Bandung: Alumni, 1983), Page 17
provisions relating to human actions \textit{\(al-\text{ahkâm al-\text{âmaliyyah}\)}} or the provisions of the kingdom concerning human actions \textit{\(al-\text{ahkâm al-taklîfiyyah al-\text{amaliyyah}\)}}.\(^3\)

So what is meant by the history of Islamic law before Western colonialism is the crucial events about Islamic law that occurred in the past, especially before European colonization entered Indonesia.

\section*{II. Patterns of Islamic Da’wah in Indonesia.}

1. \textbf{Compromised Da’wah Pattern}

\textit{Da’wah} is the act of inviting or calling people to embrace Islam. The compromised \textit{da’wah} pattern does not care about the habits and beliefs that exist in society. At that time, animism was still tolerated as long as it did not damage the substance of Islam itself. Such as still being allowed to give offerings in Java and beach parties in the month of \textit{Safar} (the second month in the Islamic calendar) by throwing buffalo heads in the sea as in Aceh.

2. \textbf{Non-compromising Da’wah Pattern}

The non-compromising Islamic \textit{da’wah} pattern is a \textit{da’wah} without tolerance for customs and beliefs in society that are not following \textit{sharia}. This \textit{da’wah} pattern is very radical regarding separating the \textit{haq} (right) and the \textit{batil} (false). There should be no mixing between the two.

Each of these patterns has its advantages and disadvantages. The compromised \textit{da’wah} pattern gets more sympathy from the community because this pattern is more inclined to assimilation by prioritizing the cultural approach of the local community. However, this \textit{da’wah} pattern takes a long time to change societal habits and beliefs. It is proven that many animisms are still existed today and practiced in society.

Non-compromising Islamic \textit{da’wah} is more radical, so it does not get sympathy from the public. This pattern is suitable in \textit{da’wah} for people who have embraced Islam, not for those new to Islam. One of the scholars who took this approach was Syekh Burhanuddin from Minangkabau.\(^4\) He emphasized the separation between customary law contrary to \textit{sharia}, such as regarding the division of inheritance in Minangkabau customs. In Indonesia, this pattern was rarely implemented, so not many areas have recorded the development of their Islamic \textit{da’wah} using this pattern.

\section*{III. THE ROLES OF INDONESIAN ISLAMIC KINGDOMS IN IMPLEMENTING ISLAMIC JUDICIARY.}

There were similarities in implementing Islamic law among the Islamic kingdoms in Indonesia, especially regarding civil law. Meanwhile, the implementation of Islamic criminal law experienced diversity. Only a small part of the Islamic kingdoms implemented pure Islamic criminal law. In general, the implementation of criminal law followed customary law. The following are the Islamic kingdoms that implemented the Islamic law in Indonesia:

1. \textbf{The Kingdom of Samudra Pasai}

Islam entered Indonesia around the 13th and 14th centuries AD and began in the Samudra Pasai kingdom.\(^5\) It was spread by traders from Hadramaut and Gujarat, India, and a small part of

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\textit{After learning from a famous scholar in Aceh, Sheikh Abdurrauf As-Singkili, Sheikh Burhanuddin returned to his hometown in Minangkabau and reformed Islamic law in Minangkabau by establishing a Religious School in Pemasiangan, Kapah-kapah (Padang Panjang), Ahmad Ibrahim, Sharon Siddique and Yasmin Hussain, \textit{Reading on Islam in Southeast Asia,} (Customs and Islam: An Examination of Conflict in Minangkabau,} article by Taufik Abdullah), Institute of Southeast Asian Studies Heng Mui Keng Terrace, Singapore, 1985. Page 96
\end{flushright}
the Persians. The development of Islam at that time was more dominant in coastal areas closer to
the port, while in remote areas, it was less due to limited transportation.

Islamic history records Samudera Pasai as the first Islamic kingdom in Indonesia. This
kingdom was established after Rajendra I from India 102-1024 failed to subdue the area. At
that time, the King lost the sympathy of the folk causing his defeat. It is recorded that Malikus Saleh
was the King who occupied the throne. He was the first to become a Muslim ruler.\(^6\) Samudera Pasai was
one of the Islamic kingdoms that applied Islamic criminal law.

According to Hamka, from the Kingdom of Pasai, the \textit{Shafi‘iyah} mazhab was developed for
other Islamic kingdoms in Indonesia. Even after the Islamic kingdom of Malacca was established
\(1400-1500\, AD\), their Islamic jurists came to Samudera Pasai to ask for a decision on various legal
issues they met in society.\(^7\)

The implementation of Islamic law was integrated with the courts and was carried out in
stages. The village-stage court led by the \textit{Keuchik} (village’s leader) conducted the first stage. The
court only handled minor cases and can appeal to the \textit{Ulee balang} (second stage court).
Furthermore, an appeal can be made to the \textit{Sultan} (king), which was carried out by the Supreme
Court, whose membership consists of Malikul Adil, the \textit{Rich Sri Paduka Tuan}, the \textit{Rich Raja
Bandhara}, and \textit{Faqih} (ulama/scholar).\(^8\)

Islamic criminal law has been implemented in the Pasai kingdom, such as the stoning
punishment of Meurah Pupoek, the king’s son, who was proven to have committed adultery.
Implementing Islamic law in this kingdom did not differentiate position or class from the royal
family to ordinary people. If proven to have violated Islamic law, they got a punishment
commensurate with their actions.

The Court Hierarchy in the Samudera Pasai Kingdom:

\begin{center}
\begin{tikzpicture}
    \node {SUPREME COURT
        \textbf{Final Stage}};
    \node [below] at (0, -1) {ULEE BALANG
        \textbf{Second Stage}};
    \node [below] at (0, -2) {KEUCHIK
        \textbf{First Stage}};
    \node [above] at (0, 1) {SUPREME COURT
        \textbf{Final Stage}};
    \node [above] at (0, 0) {ULEE BALANG
        \textbf{Second Stage}};
    \node [above] at (0, -1) {KEUCHIK
        \textbf{First Stage}};
    \draw [->, thick] (0, 0) -- (0, -1);
    \draw [->, thick] (0, -1) -- (0, -2);
\end{tikzpicture}
\end{center}

2. The Mataram Kingdom

Before Sultan Agung became the Sultan of Mataram, Islamic law was less dominant in the
kingdom, and many folks embraced Hinduism. During the reign of Sultan Agung (1613-1645),
Islamic law lived and greatly influenced the kingdom. This statement was proven by changes in the
legal system in Mataram, which adjudicated the cases that endangered the kingdom’s safety. The

\(^5\) Harun Nasution, ed., \textit{A Brief History of Islam From the Birth to Development in the First Middle of the Twentieth Century}, Ed.2, (Jakarta: Djambatan, 1994), page.25.
\(^6\) Samsul Whidin dan Abdurrahman, \textit{A Brief Development of Islamic Law in Indonesia}, Ed. 1, (Jakarta: Akademika Pressindo, 1984), Page. 24.
\(^7\) Muhammad Daud Ali, \textit{Loc.cit}.
\(^8\) Cik Hasan Basri, MS., \textit{Religious Courts in Indonesia}. Ed.3, (Jakarta: RajaGrafindo Persada, 2000) Page 113 123
court term for the case was *Kisas*, one actual term in the original. Mataram kingdom did not fully implement Islamic criminal law but only applied it in *Bugah* (rebellion) matters.

Outside the territory of Sultan Agung, on the north coast of Java, especially in Cirebon, the implementation of Islamic law was dominant, especially those related to family cases. For example, in the Priangan area, it was found that religious courts adjudicated the cases that are currently included in subversive issues. The courts were guided by the pillars set by the *Penghulu*, the religious leaders in the kingdom.

The court system in Cirebon was implemented by seven ministers representing three sultans: Sultan Sepuh, Sultan Anom, and Panembahan Cirebon. All events that became the trial were decided according to the *Mataram*, *Jaya Lengkara*, *Contra Menawa*, and *Adilullah* laws. However, there was one thing that cannot be denied in the *Cirebon Papakem*: Islamic law had fundamental influences.

The *Pradata* Court, which existed then, was changed to the *Surambi* Court, held in the mosque’s foyers. Although the principle was still in the hands of the Sultan, the court head shifted to the *Penghulu*, who was accompanied by several scholars from the *Pesantren* (Islamic school) as the assembly members. The *Surambi* Court’s decision served as advice for the Sultan in making decisions contrary to the *Surambi* Court.

The Courts Hierarchy in the Mataram kingdom:

3. The Banjar Kingdom

The entry time of Islam into the Banjar kingdom or South Kalimantan is still uncertain. However, estimates of the entry and development of Islam in South Kalimantan could occur in the 16th century. Pure criminal law was implemented in the Banjar kingdom. It was proven by finding cases of cutting off hands for thieves and stoning for anyone who commits adultery.

The Banjar Kingdom was recorded as a large kingdom that embraced Islam. The beginning of Islam was certainly from one person to another but eventually found a rapid spread when the Sultan of Banjar converted to Islam. The sultan was previously named Prince Samudera and then changed his name to Prince Suriansyah. Prince Samudera promised he would convert to Islam if he won the war against his uncle Pangeran Tumenggung, after receiving reinforcements from the kingdom in Java.

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9 Mr.R.Tresna, *Courts in Indonesia Through The Centuries*, (Jakarta: Pradnya Paramita, 1978), Page 18
10 The Pradata Court was a court whose cases were directly handled by the King. In general, Pradata cases were the cases that endangered the crown, the security and order of the state, for example causing domestic unrest, murder, persecution, robbery, theft (under certain circumstances), and so on. Such cases were tried by the King personally. In addition to civil cases, there were also Pada cases concerning individual people’s interests, such as disputes between the people, which cannot be reconciled amicably by the peace judges in their respective areas. Tresna, ibid., page 14
11 Tresna,ibid.
13 Zafry Zamzam, *Syekh Muhammad Arsyad Al-Banjary as a preacher scholar*, (Banjarmasin: Karya, 1974), page 2
With the king's conversion to Islam, further developments were not so difficult because it was supported by facilities and conveniences from the kingdom, which eventually led to the Banjar people's life based on Islam teachings. However, like other entries of Islam in Indonesian areas, which came after Hinduism, the legal conception adopted in the Banjar kingdom also seems not to be purely based on the Qur'an and As-Sunnah. It was influenced by the old customs that the population adhered to before Islam came, such as animism. It became a tireless challenge for scholars to erode any teachings contrary to Islam.

The existence of Muftis and Qadis manifested the religious life in the Banjar Kingdom. They were the judges and royal advisors in the field of religion. They handled matters relating to family and marriage law. Likewise, Qadi dealt with personal legal issues, especially resolving criminal cases known as Had. It was recorded in the history of Banjar that the law was enacted to kill apostate Muslims, cut off the thieves' hands, and chastise anyone caught committing adultery. Even in the legal order of the Banjar Kingdom, it has been codified in a simple form, with legal rules that were utterly oriented to Islamic law. The codification was known later as the Sultan Adam Law. Eventually, the Sultan's position in Banjar was not only the power holder of the kingdom but was further recognized as the Ulul Amri of the Muslims throughout the kingdom.

4. The Kingdoms in Sulawesi

In Sulawesi, integrating Islamic teachings and institutions into the royal and customary government was smoother because of the king's role. The kingdom that first officially accepted Islam was the Tallo kingdom in South Sulawesi. Then followed by the kingdom of Gowa, which emerged as the strongest kingdom and had influence among its people. Through political power in the royal structure, Parewa Syara' (Sharia officials) were placed in the same position as Parewa Adek (adek officials) who existed before the arrival of Islam (level II courts). Parewa syara' was led by Kali (Qadi), the highest Islamic law official based in the kingdom's center (level III court). In each Paleli, appointed bahwan officials were called Imam and assisted by a Khatib and a Bilal (level I Court). Qadis and officials of these affairs were given salaries taken from zakat of wealth, Eid al-Fitr and al-Adha alms, royal feasts, and funeral and wedding arrangements. It happened during the reign of the king of Gowa XV (1637-1653) when Malikus Said was in power. Previously, the king of Gowa himself was the Judge of Islam.

The Courts Hierarchy in the Kingdom of Sulawesi

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14 Ibid. page 11
5. The kingdom of Raja Ali Haji in Riau.16

The judicial system in the Riau kingdom was well established during the time of Raja Ali. It has complete apparatus as a court today. The judiciary consisted of the Royal Court, responsible for resolving domestic disputes in the kingdom, and the Sub-Court, responsible for dealing with every problem that arose in society. For each court, three Qadis were appointed to deal with matters of Mu'amalah (transactions), Jinayah (criminal law), and Munakahat (marriage and family law).

The Structure of the Royal Court of Raja Ali Haji Kingdom

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16 Mahdini, Tsamarat al-Muhimah Raja Ali Haji’s Thoughts on Justice, Ed.1, (Pekanbaru: Yayasan Pusaka Riau, 1999), page 136-141
IV. The Period of Islamic Law Implementation in Indonesia Before the Arrival of the Western Colonizers

There were three periods of Islamic law implementation in Indonesia before the western colonizers’ arrival, namely: 17

1. Tahkim Period
The people did tahkim (entrusted a third party neutral to adjudicate the disputes) in personal matters that resulted in clashes between their rights and interests in their behavior. For example, a woman did tahkim to Penghulu as her guardian, who is responsible for giving her away in marriage.

2. Ahlul Hilli wal Aqdi Period
During this period, a scholar was pledged and appointed as a Qadi to adjudicate every societal case. So, a Qadi acted as a judge.

3. Thauliyah Period

Philosophically, it can be seen that in this third period, the influence of the Trias Politica teachings from Montesque, France, and previous theories such as JJ. Rousseau, Thomas Hobe, and others have begun to appear. The thauliyah period can be identified as a delegation of authority, namely the transfer of power (authority) adjudication to a legal entity (judicative), but it was not absolute. For example, if a dispute occurred in Minangkabau, it was handed over to the head of the Nagari, and the cases related to religious matters were handed over to the Qadi. These periodization facts were proven by a collection of Islamic marriage and inheritance laws for the areas of Cirebon, Semarang, Bone, Goa (Makassar), and Papakem Cirebon.

The entry of Islam into Indonesia using a compromising approach had indirectly created assimilation between Islamic law and custom beliefs in society before Islam came. This assimilation in several areas in Indonesia was very obvious, such as in Java, which is still ongoing until now.

An example of the assimilation of Islamic law, which is very basic, was the imposition of the death penalty, which was decided by a Qadi that still required approval from the King. It has been happening in the Cirebon kingdom for quite a long time. This regulation is reminiscent of the influence of Hindu law previously implemented in the Cirebon kingdom. 18

In the Mataram kingdom, the court’s leadership, although in principle still in the hands of the king, shifted to the Penghulu, whom several scholars assisted as members. According to Islamic law, it was irrelevance with the court form, which only recognizes a single judge, called a Qadi. The Surambi Court, on the other hand, was an assembly where all decisions were taken by deliberation. 19

In addition to the assimilation of Islamic law, the intervention of the King in the implementation of Islamic law was very influential. In every court arrangement, the kingdom must be involved not only as a member but also as a decision-maker. The scholars’ roles were limited to giving advice and had no authority in the final decision.

V. CONCLUSION

In general, the Islamic kingdoms in Indonesia have implemented Islamic law. Although not all kingdoms applied pure Islamic punishment, when it came to family law, almost all Islamic kingdoms implemented it. While the law concerning criminal acts was only implemented in the kingdom of Samudera Pasai and Raja Ali Haji in Riau. The implementation of Islamic law has assimilated with the existing custom law before the entry of Islam. This assimilation of laws was

17 Mohd. Idris Ramulyo, Principles of Islamic Law, History of the Emergence and Development of the Position of Islamic Law in Indonesia, (Jakarta: Sinar Grafika: 1997) page 52
18 Tresna, Loc.cit
19 Ibid, hlm. 18
due to the compromising da’wah pattern carried out by the scholars who allowed local laws or customs still applied. As a result, it was challenging to eliminate the laws in society that were not following Islamic law. The implementation of the Islamic law practiced during the Islamic kingdoms periods should be referenced in drafting a new format for national courts nowadays, especially those concerning Islamic courts.

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