

Qonun in Indonesia from an Ontological and Axiological Review

Sholihin Shobroni¹

¹ Correspondence Author: sholihinshobroni26@gmail.com

¹ Nahdlatul Ulama Nusantara College of Sharia (STISNU Nusantara), Tangerang, Indonesia

INDEXING

Keywords:

Keyword 1; Qonun

Keyword 2; Axiological

Keyword 3; Ontological

Keyword 4; Implementation

ABSTRACT

Qonun is one of the applications of law sourced from Islamic shari'a in Indonesia. Applying Qonun to various products in Indonesia has resulted in multiple legal products. However, its implementation still reaps the pros and cons in the public. The purpose of this research is to convey the implementation of Qonun from the Ontological and Axiological reviews. The research method used is descriptive, with literature review data analysis. The implementation of Qonun in Indonesia has been ongoing since the beginning of the independence of the Republic of Indonesia. The implementation of Qonun has been realized in various legal products including Laws, Government Regulations, Presidential Instructions, and Regional Regulations. Thus, the implementation of Qonun can be reviewed to fulfill the Ontological and Axiological aspects.

Article History

Received 16 September 2024; Revised 27 September 2024; Accepted 03 October 2024

INTRODUCTION

There is intellectual unrest, when we witness a dichotomy that is too sharp between the terms “Islamic law and general law which is synonymous with positive law so there is a phrase” Islamic law versus general law or Islamic law versus positive law this dichotomy is getting worse when I then have my region (Mukri, 2017 ; Arifin, 2017). Islamic law in Indonesia has undergone dynamic and sustainable development, both through political infrastructure and superstructure channels that are in line with reality, demands, and support, as well as the will for efforts to transform Islamic law into the National legal system (Sihombing, 2024). Historical evidence of Islamic legal products from the colonial period to the period of independence and the reform period is a fact that can never be challenged, as well as described by Horowitz (1994).

The phenomenon of qonun and the discourse of taqnin al-ahkam in Islamic law is one of the issues that triggered widespread controversy among Muslims. There is a camp that approves and there is also a camp that opposes it, even fiercely. This is because taqnin al-ahkam is a relatively new discourse. In Indonesia itself, the discourse of taqnin of Islamic laws was also discussed when the New Order collapsed and entered the Reform Order along with the establishment of autonomy policies in various regions. Many Sharia local regulations have sprung up in various regions. The most attention-grabbing is, of course, the case in Aceh, which has enacted Sharia laws (qonun) on certain matters (Ridwan *et al*, 2023).

The phenomenon of sharia regional regulations itself has undoubtedly drawn many responses, both pro and con. Of course, many non-Muslims protested and considered that it was an attempt to make Indonesia an Islamic state. In addition, liberal-minded Muslims also

vigorously opposed it. Based on the Patra (2017), the formalization of sharia in the form of local regulations, especially local regulations on immorality, is accused by them as a form of government intervention in the private domain of society.

With this, the author tries to reveal what is behind the qonun and the process of taqin in Indonesia, many interesting things need to be discussed in the discussion of qonun and taqin in mapping in framing the issues of qonun and taqin in Indonesia. This dynamic is the background of the author in writing this paper. The author hopes that it will be useful to enrich the knowledge, especially in the field of Islamic legal philosophy which concentrates on the discussion of the theme of qonun wa taqin.

LITERATURE REVIEW

Fiqh as Islamic Law Formulation (Spirit of Qonun Formation)

Epistemologically, the Qur'an and the Assunah are the most authoritative sources in Islamic law, language study, reasoning, and empirical reality studies using various perspectives in the field of science to determine Islamic law, all of which are shown to conclude from the two sources of Islamic law (Wijaya, 2022). When the two sources have been found in the raw materials of the sources of Islamic law, they are managed in the form of Islamic law in praxis contained in the texts of fiqh. Rahman (1984) stated that in its history the term fiqh has developed which includes at least three phases, First fiqh means understanding (fahm or understanding). Fiqh is identical to the meaning of ra'yu (personal opinion of fuqoha or fiqh experts). Second, fiqh implies knowledge, which becomes synonymous with thinking about religion, and third, fiqh means a discipline from the types of Islamic knowledge or science, namely only the discipline of Islamic law, some call it Islamic positive law or Islamic legal science.

According to Thalib (2018), Islamic Law or Islamic law only comes from the Qur'an and Sunnah of the Prophet Muhammad SAW which regulates all aspects of the lives of its people (about how to worship God and how to act to others). Seeing this statement, the definition of Islamic law can be equated with Islamic shari'a, but in the applicative level procedure. Thus, Islamic Law, in the language of Azhari *et al* (2016), has two key terms namely (a) shari'at and (b) fiqh. Shari'at consists of the wahyu Allah and the Sunnah of the Prophet Muhammad and fiqh is the result of human understanding of shari'at. In other words, Islamic Law is the law that is determined on both (shari'ah and fiqh) about the behavior of people who are Muslims.

Fiqh as the Science of Law

More popularly fiqh is usually defined by: al ilm bil ahkam alshariyyah alamaliyyah almuktasabah min adilatih al tafsiliyyah (Science that studies the laws of sharia relating to behavior or action (not aqidah) which is based on specific arguments (Khallaf,). Syekh Abu Ishaq asy Syairozy (2012) explains that Fiqh is knowing (finding) the law of sharia which is done by ijtihad, after becoming a separate discipline the term fiqh is usually interpreted as Islamic law or some call it positive Islamic law. In general, the most appropriate is the science of Islamic law (Islamic jurisprudence) which contains the material law of the law and even the procedures of the process in court (procedural law, fiqh murofaat) as in the definition that mentions it as a collection of laws.

Fiqh as a Norm of Law

In reality, the fiqh produced by the clerics so far is generally the understanding and interpretation of the clerics of Ahkam Assyariyyah and not the sharia itself. Islamic law or fiqh as a legal norm is thus a dialectic between cultural beliefs that exist in society (including customary law and applicable positive law). The need for affirmation of fiqh as a legal norm is because as stated fiqh in addition to containing legal norms is also still thick with the content of moral norms. Indeed, the rule of law in Islam is to uphold the moral values it contains, but if the moral norms are prominent then sometimes it will override the enforcement of the rule of law itself, for example in the book of Fiqh and perhaps in some laws and regulations the permissibility of polygamy (based on Q.S An-Nisa (4) verse 3 is set as a positive rule of law but the fair requirement for polygamy is only seen as a moral recommendation so that then justice is seen as a moral recommendation only.

In the Indonesian context, fiqh as an Islamic law norm is a set of rules as a result of dialectics between sharia values and customs of Indonesian society, which are formulated consciously and deliberately to create order in society (Muhajir *et al*, 2023). However, Nur (2020) stated that the rules of Islamic law in Indonesia in addition to philosophically must contain and be by sharia values, also sociologically must be by the socio-cultural conditions of the surrounding community.

Objectification of Islamic Law in Indonesia

The objectification of Islamic law thus still views Islamic law as a source, but to be able to become a legislated law, Islamic law must be objectified first by engaging all citizens, namely through representatives in the Parliament (DPR) (Arfa, 2014). To objectify Islamic law, or in other ways to make Islamic law objective so that it can be accepted by all Indonesian citizens and in turn can be made into national law, it is necessary to formulate a systematic pen-taqqin-an methodology that can dialogue between the values contained in the Qur'an and as sunnah as the source of Islamic law with the reality of the society that will be applied in the law.

RESEARCH METHOD

This research was prepared using a descriptive method, with analysis using a literature review. The descriptive method is a method used to provide an overview of the situation, condition, and chronology of an event (Kim *et al*, 2017). The literature review analysis explores various references which include:

1. Study of the definition of Qonun
2. Study on the implementation of Qonun in Indonesia
3. Study on the Function of Qonun

RESULT AND DISCUSSION

Definition of Qonun

Kanun or qonun comes from Greek which entered Arabic through Suryani, which means “measuring instrument” and then means “rule” In Arabic the verb qonna means to make law (to make law, to legislate). Then kanun can mean law (law), regulation (rule, regulation), statute (statute, code). In his book al-ahkam al shultoniyyah which is usually translated as “constitutional law in Islam” AL Mawardi (W.450 / 1058) has used qonun on several occasions which means it has connotations or specifications that are not always the

same, such as qowanin al syahsiyyah (legal provisions in the political area or public law) hifzh al syar iyyah wa harasat al ahkam ad diniyyah (safeguarding public law based on sharia and maintaining religious law) Al qowwanin muqorrarah (law), as the study of Al Wilayatuddiniyyah ().

According to Mahassami (1981), with the use of the term qonun by Mawardi (2006), then the assumption that the term qonun just started in use during modernization (tanzimat) in Turkey with the existence of al majallah al ahkam al adliyah (book of justice law / the book of rules of justice; or often in the sense of civil code) it is not appropriate. However, the fact that the term qonun has gained popularity since its use in Turkey cannot be denied. Indeed, the magazine is the earliest example of Islamic law in the form of a statute (modern model law system) with the same coercive power as general laws. Here the term qonun is generally used to refer to laws relating to society rather than worship, particularly public laws. In addition to qonun meaning law or things that contain law, qonun means registers and lists recording land taxes. In its usage, Mahmassani (1981) stated that qonun has three meanings:

1. A collection of laws or regulations (a book of laws). This term is used in the Ottoman Criminal Code (Ottoman Turkish Criminal Code), Lebanese Civil Code (Lebanese Civil Code), etc.
2. A term that is equivalent to law. So we can use qonun science as the same as the science of law. English qonun is the same as English law, Islamic qonun is the same as Islamic law, and others.
3. Law. The difference between this third definition and the first one is that the first one is more general and covers many issues, while the third one is specific to a particular issue. For example, marriage qonun is the same as marriage law. It can also be used for the expression “The House of Representatives and the Government are working on a qonun on the prohibition of liquor”. Qonun in this sense is only about laws relating to muaammlat, not worship, and has a legal rigidity whose implementation depends on the state. This is different from the discussion of Islamic law in general, which usually always includes muammlat and ibadat.

Implementation of Qonun in Indonesia

In a more concrete reality, there are several legislative products that formally and materially expressly have the juridical content of Islamic law, among others:

- a. Law of the Republic of Indonesia No. 1/1974 on the Law of Marriage
- b. Law of the Republic of Indonesia No. 7/ 1989 on Religious Courts (Now Law No. 3,72006)
- c. Law of the Republic of Indonesia No. 7/1992 on Banking which allows the use of profit-sharing principles
- d. Law of the Republic of Indonesia No. 10/1998 on the Amendment to Law No. 7/1992 on Banking which allows the use of Sharia Principles.
- e. Law of the Republic of Indonesia No. 17/1999 on the Implementation of the Hajj Pilgrimage
- f. Law of the Republic of Indonesia No. 38/1999 on Zakat Management
- g. Law of the Republic of Indonesia No. 44/1999 on the Implementation of Special Autonomy for Nangroe Aceh Darussalam
- h. Political Law of 1999 which regulates the provisions of Islamic parties

- i. Law of the Republic of Indonesia No. 16 of 2001 concerning Foundation
 - j. Law of the Republic of Indonesia No. 41 of 2004 concerning Waqf
 - k. Law of the Republic of Indonesia No. 3 of 2006 Concerning the Amendment to Law No. 7 of 1989 Concerning Religious Court
 - l. Law of the Republic of Indonesia No. 19 of 2008 on state sharia securities
 - m. Law of the Republic of Indonesia No. 21 of 2008 on Sharia Banking
 - n. Law of the Republic of Indonesia No. 13 of 2011 concerning Zakat management
- In addition to the level of the Law, other regulations are below the Law, including:
- a. Government Regulation No.9/1975 on the Implementation Guidance of the Marriage Law
 - b. Government Regulation No.28/1977 concerning the Perwakafan of Owned Land
 - c. Government Regulation No.72/1992 on the Implementation of Banks Based on Profit-Sharing Principles
 - d. Presidential Instruction No.1/1991 on the Compilation of Islamic Law
 - e. Presidential Instruction No.4/2000 on the Handling of Special Autonomy Issues in NAD

Of the many legislative products that contain Islamic law material, the most phenomenal event was the enactment of Law No.7/1989 on Religious Courts. Religious Courts have long been recognized since the colonial period (Mahkamah Syar'iyah) until independence, from the Old Order to the New Order, but it was only in the late 1980s that Law No.7/1989 was passed as a law. Whereas Law No.14/1970 in Articles 10-12 explicitly recognizes the position of the Religious Courts and their existence and authority.

The existence of Law No.7/1989 on Religious Courts and Presidential Instruction No.1/1991 on the Compilation of Islamic Law is also a juridical basis for Muslims to resolve civil matters. The struggle of Muslims in the 45 years since the old order and 15 years since the New Order, is a long struggle that requires patience and hard work until the enactment of Law No.7/1989 on December 29, 1989.

In line with changes in the political climate and democratization in the early 1980s until now, there are positive signs for the progress of the development of Islamic law in all dimensions of community life. Structural approach and harmony in the process of Islamization of social, cultural, political, economic, and legal institutions, increasingly open the door wide for efforts to transform Islamic law in the national legal system. It remains only how the political position of Muslims does not dim and lose direction so that it continues to exist and play a greater role in raising and advancing a new Indonesia that is just and prosperous.

The presence of the Indonesian Muslim Scholars Association in the early 1990s was an unavoidable social and political reality. The large role played by Islamic political elites in the bureaucracy, as well as the role of Islamic figures who are active in various Islamic social organizations, is seen as very important, especially in responding to the collective will of Muslims. In other words, the existence of various legislative products and regulations based on Islamic law is not an easy matter, like turning the palms of both hands, but all of that has been done through a political process over a long historical span.

Function of Qonun

Islamic law that has been qonun kan in the Indonesian legal system so far has only been active in the field of civil law (Islam), especially in the field of the family. In other fields of law, Islamic law can be said to have not contributed anything to the development of positive law in Indonesia, so it is as if the field of law does not concern Indonesian Muslims. As stated in the introduction the teachings of Islam, including its legal field, are a blessing for all mankind and even the universe. This means that the norms of Islamic law in its various fields should be suitable for all mankind and not only specifically for Muslims, which of course in its implementation adjusts and the needs of the local community (Najib, 2011).

The products of legislation whose materials are derived from Islamic law are the law on marriage, the law on religious courts, the compilation of Islamic law, the law on the organization of the hajj, and the law on the management of zakat. The law on waqf, the law on Islamic banking, for the law on the organization of the hajj pilgrimage, all relate to Islamic civil law which is handled by the religious courts (Yasir *et al*, 2021).

Since the 1970s until now the direction of the dynamics of Islamic law and the process of transformation of Islamic law has run synergistically in line with the political dynamics in Indonesia. The three phases of the relationship between Islam and the state during the New Order era, namely the antagonistic phase with nuances of conflict, the critical reciprocal phase with nuances of Islamic structuralization, and the accommodative phase with nuances of harmonization of Islam and the state, have opened up the possibility of the formation of legislation with nuances of Islamic law.

CONCLUSION

This research concludes that the implementation of Qonun in Indonesia has been implemented since the beginning of the independence of the Republic of Indonesia and is still ongoing until now. The implementation of Qonun has been realized in various legal products including Laws, Government Regulations, Presidential Instructions, and Regional Regulations. Thus, the implementation of Qonun can be reviewed to fulfill the Ontological and Axiological aspects.

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