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History of Islamic Economic Law Development in Indonesia

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ABSTRACT

The development of economy in the world is increasingly developed and enlarged. If there are no things that limit the use or implementation of it, it will give rise to things outside the rules of human life. Then it takes the expected norms could be disallowed in order that human beings act reasonable and not excessive. Because if not, it will soon be a contradiction and each individual to compete and to earn a profit of-magnitude. Economic Law existing in Indonesia can be referred to the book of the law of civil law and several articles on positive law. However, as a man of religion Islam, one must refer to the main reference in the form of propositions as Syar'iyah, like in the Qur'an and Hadith. Finally, in addition to the more needs is fulfilled, Proved that the economic Laws of Islam are also increasingly needed. Then the Islamic economic laws appear in society. And on the discussion this time, author tries to explain and discuss the historical development of Law, about the Islamic Economy.

Keywords: History, Islamic Economic laws and development

INTRODUCTION

The human endeavor to sustain life has been realized since humans existed in this world. For instance, humans will feel hungry if they do not eat, thirsty if they do not drink, and cold if they do not cover their bodies with protective clothing. From there, strategies emerged on how to fulfill needs and avoid scarcity. The term "Economics" was eventually coined by Xenophon, an ancient Greek philosopher who lived from 430-354 BC, which means household management (Herry-Priyono, 2007).

Explanation of Economics has developed over time, and many scholars have attempted to develop this science in line with the growing world. Islamic scholars have also played a role in developing the science of economics in the world. It is generally known that Islamic economics is the behavior of human economics that is regulated based on the rules of Islamic religion and is based on Tawheed, which acknowledges the oneness of Allah, as summarized in the pillars of faith and pillars of Islam (Nizar, 2012, p. 9).

Talking about Islamic law, Muslims do not need to worry about solving their life problems, because Allah SWT has provided a clear guidance in the form of the Quran which contains life instructions until the end of time, complete with as-Sunnah or Hadith, which includes the intercession of Prophet Muhammad SAW, which elaborates on all of the teachings, words, and deeds of the Prophet regarding a comprehensive religion (Abu Khoir, 1999, p. 553; At-Thuhhan, 2004, p. 17).

In the pre-Prophet era, there were no written rules that regulated the way of life in society, which led people to have a false and uncontrollable belief. Even though there were written rules at that time, they did not provide many benefits, so the people still lived in a dark and ignorant era (As-Sayis, 1996, p. 13). Therefore, after moving on from that era, the written rules began to be applied by the people in the form of laws and policies that regulate the applicable laws.

UNDERSTANDING LAW

The word "hukum" originates from Arabic, which means "decision," plural "ahkam." It can also mean to decide, judge, establish, order, punish or control. In the Indonesian language, the Great Dictionary interprets "hukum" as a regulation or custom that is officially considered binding, ratified by the ruler or government, law or regulation. The law is also used to regulate social life, guidelines (rules, provisions) regarding certain events (nature and others), decisions (considerations) made by judges (in court) and also verdicts (Depdikbud, 1994, p. 1611). So linguistically, it can be interpreted as something that when someone decides something with a decision, whether binding or not (Universitas Negeri Jakarta, 2010, p. 2).

Another definition, law is something that can establish provisions for implementing an order or prohibition (Al-Ezz, 1990, p. 10). Law is also referred to as the result of the *ijtihad* of scholars with the development of *fiqh* law in the Qur'an and Sunnah (Retnowulandari, 2002). *Ijtihad* can be interpreted as a sincere effort made by religious experts to reach a conclusion (decision) of Sharia law regarding a case that has not been stated in the Quran and Sunnah (Depdikbud, 1994, p. 539).

To face the development of an increasingly modern era, it is not enough to rely on references to previous *Fiqh* books because the more modern a time, the more modern the problems that arise. In general, Islamic law has developed since the time of the Prophet, but specifically, Islamic law that has the most rapid development is in the field of economics, including banking (Muhammad, 2009). It is said so because the financial institutions that have the most rapid development are banks.

In Dutch, "Tata Hukum" is called "Recht Orde," which is a well-organized and orderly law about legal rules in social life, carried out to become a solution that can overcome every legal event that exists in the world (Djamali, 1984, p. 5). Law in Indonesia follows Dutch law as an inheritance from colonial ancestors who colonized Indonesia for approximately 350 years.

HISTORY OF LAW IN INDONESIA

The legal system in Indonesia has experienced ups and downs, but it has significantly developed since the colonial era, through the reform era, and up to the present modern government (Muslim, 2013). Therefore, even though it may appear to be slow in development, it has actually made significant progress since its inception. Indonesia is one of the developing countries, which means that its legal development is not the same as in developed countries, making it more challenging to deal with the existing laws. This is because developing countries were colonized by developed countries, so the legal system used is still influenced by the colonizers (Saly, 2008). As recorded in history, besides Japan, the largest colonizer in Indonesia was the Netherlands, a Western country that dominated weak countries. In general, the Western legal system is not compatible with the customs in Indonesia (Mustaghfirin, 2011), so discussing global law and Indonesian law will result in two different and opposing discussions. To focus on the discussion, it is better to talk more about the law in Indonesia.

The development of Indonesian law can be divided into three stages. The first stage is philosophical. Philosophical means based on philosophy. Philosophy is knowledge and investigation by reason about the nature of all that exists, its causes, origins, and laws; the theory underlying mental activity or a particular practice; a science centered on logic, aesthetics, metaphysics, and epistemology; a collection of beliefs, ideas, and attitudes (Depdikbud, 1994, p. 410). Islam is a teaching on how to view life, moral ideals, and law. The second stage is sociological reasoning. Sociology is knowledge or science about the nature, behavior, and development of society; the science of social structure, processes, and changes (Depdikbud, 1994, p. 1371). In this stage, the development of the Islamic history of Indonesian society has real and interconnecting values. The third stage is juridical, which is in articles 24, 25, and 29 of the 1945 Constitution, which state that the implementation of Islamic law in Indonesia is done juridically normally (Abdullah, 1990; Falaakh, 1992).

The majority of Indonesians embrace Islam, which is often referred to as a religion of mercy for all mankind. Therefore, any form of regulation that follows the straight path established by Islamic law will be a blessing and success. As mentioned in the Qur'an, Baldatun Thooyibah is a blessed land granted by the Most Forgiving God. Therefore, it is not far-fetched if the people of Indonesia want to make their country a blessing, as it is written in the Qur'an: *“Eat from the provision of your Lord, and be grateful to Him. Yours is a good land and a forgiving Lord.”* (Al-Qur'an Surah Saba' Verse 15).

If one wants to make a country full of Allah's blessings, then its inhabitants must also be good. Good here means *amar ma'ruf wa nahi munkar*, living according to Allah's commands and staying away from His prohibitions. Therefore, laws are needed to regulate and limit human life so that it does not go beyond the boundaries and stays on the straight path of Allah. With that, Allah will not hesitate to make that country a good one. The criteria for a good community in governing a country have also been mentioned in the Quran, in Surah Al-Imran verse 110: “You are the best community ever raised for humanity—you encourage good, forbid evil, and believe in Allah. Had the People of the Book believed, it would have been better for them. Some of them are faithful, but most are rebellious.”

A good community is one that enjoins what is right and forbids what is wrong, which can also be interpreted as a good government being someone who can lead their people towards goodness and not lead them astray. Laws in the form of written norms, or what is known as the Law, are issued, which contain what is allowed and what is prohibited in the country. One example of a government effort to make their country good is by creating written regulations. According to the written classification, Indonesian Law regulates two things. The first concerns civil law, and the second concerns criminal law. Civil law is the law that regulates rights, property, and relationships between individuals within a country. While criminal law concerns crimes or violations (criminal acts) with their sanctions (Depdikbud, 1994, p. 531).

Not only positive law (criminal and civil) is the guiding principle for Indonesian society, but since the majority of Indonesians are Muslims, they also follow the Islamic Law system. Islamic Law is a method that regulates human behavior in accordance with evidence obtained from the Qur'an, Hadith, Ijma, or Qiyas. Ijma is the consensus of the scholars on a matter or event in Islamic law, after the death of the Prophet Muhammad SAW (Khalaf, 2010, p. 42). Qiyas is the law issued by scholars because the event that occurred has never been mentioned in the Qur'an, Hadith, or other Nash-Nash. Finally, the scholars compare it with the existing law based on illah or cause determined by the law (Al-Shathry, 2006). Islamic law is made so that humans do not deviate from the provisions that have been determined in al-'adilah as-syar'iyah that have been mentioned (Khalaf, 2010, p. 21 & 90).

The process of the entry of Islamic law in Indonesia is said to have begun before the 20th century. Although it has been mentioned that it was already done in the 12th and 13th centuries, many criticize the news because it is still being ijthihad by scholars. In reality, the development process in Indonesia was slightly hampered during the Dutch colonial era. They inherited three laws to the Indonesian head of state, which were a mixture of Western law, Islamic law, and customary law (Sumarni, 2012). The factor believed to have a significant influence in the application of Islamic law is the perspective that M. Atho Mudzhar has clarified into four types, namely fiqh books, religious court decisions, regulations in Muslim countries, and fatwas from scholars (Mudzhar, 1991).

So far, the community has known that Islamic law only entered Indonesia in the past few centuries. However, Islamic law has actually been integrated with the Indonesian people since the time of the kingdom and colonization. Islam has become closely integrated with the Indonesian people; they just cannot distinguish between Islamic law and customary law (Sumarni, 2012). This still happens among Indonesian society, where they believe that customary laws are part of Islamic law. Unconsciously,

not only society but also politics, organizations, education, and even the economy need to be highlighted by the law.

ISLAMIC ECONOMIC LAW IN INDONESIA

If we talk about economics, it is generally agreed that the birth of economics started with the book titled "The Wealth of Nations" written by Adam Smith. This happened in 1776, and various praises emerged for him, such as that Smith had shaped society's views, solved problems that had long been a concern of society, and so on (Herry-Priyono, 2007). From there, a new term about meeting needs emerged, namely economics. Economics played a role in the development of the world, and if economics had not been discovered, it is likely that humans would not have a method of regulating their own lives. However, Muslims always include their Islamic knowledge to gain success in this world and the hereafter. And finally, Islamic economics began to be introduced among the world's communities.

Although Islamic economics is considered a different concept or seen as traditional economics (Mirakhor, 2007, p. 24), it can be believed that it is only a matter of individual perspectives when viewed from a general rationality point of view, as everyone has the right to express their opinions. In several definitions, Islamic economics is knowledge that applies Islamic law to avoid injustice in the use of natural resources for human interests (Muhammad, 2004, p. 6). Islamic economics began to develop in the 1940s, starting with the development of non-bank financial institutions in Malaysia and Pakistan (Antonio, 2001, p. 17).

In fact, Islamic economics has been applied since the time of the Prophet, but in a very simple way. Until the time of the Prophet's death and Islam was led by the Caliphs, they also contributed some Islamic economic instruments that made the people prosperous and there were no poor people at that time (Mudii'ah, 2015). Not only the Islamic economic system existed, but also the Prophet established several councils to support the operation of these systems. One such council was the shura council, which

aimed to solve problems related to society, especially economics. It consisted of ulama who were willing to live independently and finance their own lives through limited deliberation (Mudii'ah, 2015).

Initially, Islamic economics only favored Muslim countries. However, in 1970, non-Muslim countries also began to adopt Islamic economics. After observing that Muslim countries, which were considered underdeveloped, began to flourish when they started using Islamic economics (Iswanto, 2013). Islamic economics began to develop in Indonesia in the 20th century, with the establishment of Shariah banks (Antonio, 2001, p. 224), Shariah insurance (in the form of takaful) (Soemitra, 2009, p. 245), and Shariah capital markets (Soemitra, 2009, p. 111). As the Islamic economy in Indonesia continued to grow, Islamic economics also became part of Islamic law in Indonesia (Iswanto, 2013).

Since the introduction of Shariah economics to the public, disputes have naturally arisen, and religious courts have examined, made decisions and resolved disputes, using the basis of Article 49 of Law No. 3 of 2006. This article states the amendment to Law No. 7 of 1989 concerning Religious Courts. As a result, a new law was created as a means of settling Shariah Economics, namely Article 55 of Law No. 21 of 2008 concerning Islamic Banking (Mubarok, 2013). With the emergence of this new law, a new term for Islamic economics law was introduced.

The definition of economic law is a legal principle that regulates all economic activities (Djamil, 2013, p. 6). The development of the economy, both nationally and internationally, is a factor that leads to the emergence of economic law. In the end, the law is needed to regulate and set boundaries in economic activities, with the aim of preventing any parties from being harmed in the interest of society (Mardani, 2015, p. 2).

Islamic law also discusses evidence that prohibits healthy competition, such as monopolies. Monopoly is a situation where at least one-third of a particular commodity (local or national market) is controlled by one person or one group, allowing them to control the price. The

exclusive right to regulate trade, organization, and other things. Monopoly means having the exclusive right to make, trade, or own something (Depdikbud, 1994, p. 970). Islamic law also includes the fundamental principles of human behavior and natural law, but always looks at the common good and avoids harm or injustice (Al-Zarqa, 2003).

When determining all issues and disputes, Islamic economic law, referring to the Quran and Hadith, supplemented by the consensus followed by the *ijtihad* and *qiyas* of the scholars, is developed with assumptions, models, and implementations by shariah economic experts (Sarkaniputra, 2004, p. 7). Therefore, when reviewing the historical emergence of the development of Shariah Economic Law in the world, it can actually be said that its emergence began during the time of the Prophet. One example of implementation at that time is the concept of *Hisbah* in monitoring the market.

The term *Hisbah* is a reward, testing the performance with full calculation (Dewan Redaksi Ensiklopedi Islam, 1993, p. 1939). In terms of the institution, *Hisbah* is an institution that plays an important role in the early Islamic state. Its duty is to maintain and supervise the general welfare of the Islamic community, including political, social, and economic aspects (Mamat, 2010). There are actually three types of *Hisbah*, namely *Hisbah* related to the rights of Allah, *Hisbah* related to the rights of humans, and *Hisbah* related to the rights of Allah and humans (Mujahid, 2012). However, the *Hisbah* related to the implementation of Islamic economic law is the second type, namely *Hisbah* related to human rights such as paying great attention to the implementation of the principle of justice in society, such as monitoring the accuracy of weights and measures, as well as inspecting prices and goods in the market.

Hisbah develops along with economic development, adapting to the needs of the time. Ibn Taymiyyah, one of the Islamic economic scholars, also wrote a book about *Hisbah*. According to Ibn Taymiyyah, *Hisbah* is a supervisor that oversees industry, professional services, product

standardization, hoarding of goods, and usury practices (Fasiha, 2016). The role of the government in monitoring economic activities is very important because if there are no binding regulations, there will be many deviations. Therefore, actually since the development of the economy, regulations have been established in the form of laws, even if they are not written.

The government has a role in overseeing the activities between producers and consumers (Kahf, 1978, p. 48-52), in order to ensure controlled activities that stay within limits. In Islamic economics, there are principles that contradict capitalist, socialist, and modern economic ideologies (Hamid, 2006), therefore, there is a need for regulations that bind economic activities, so that economic activities such as ownership, entrepreneurship, and profit sharing remain within the framework of Islamic law.

Islamic economic law began to be written down, as the Islamic economy in Indonesia continued to grow. Since the implementation of the deregulation policy in 1988 which issued policies for society to *fastabiqul khoirot* in establishing Islamic financial institutions such as Bank Muamalat Indonesia (Muhammad, 2009). Actually, the banking deregulation policy on October 27, 1988 was the beginning of the development of banking in Indonesia in general. However, over time, the policy appeared very liberal and expansive because it did not have adequate safety guidelines from monetary authorities (Bank Indonesia, 2002, p. 28).

Economists say that law has been involved in the Islamic economy since the 20th century, when the economy applied values of freedom, in other words, freeing every economic actor to carry out all kinds of activities without limits such as free trade and others. Ultimately, Islamic economic law that uses *istihlah* rules began to play a role in economic activities throughout the world (Al-Zarqa, 2003). As is known, Islamic economic law is more commonly referred to as *fiqh Muamalah* because in its implementation, it deals with *muamalah* practices (Tsabir, 2008, p. 18). If

fiqh muamalat is referred to from the yellow books of the previous scholars, Islamic economic law is required to provide a way to fully implement Islamic law in the field of economics, but adaptation is needed in responding to changes in time and place related to human and economic activities (Iswanto, 2013).

Islamic economic law in Indonesia and around the world began to emerge when Islamic economy in the world appeared comprehensively. In the historical record, Islamic law, which has existed in Indonesia since the 17th century, officially and in writing, slowly has a book of law that becomes a reference for legal experts in deciding cases. However, for economic matters, Indonesia still does not have a special book of law, so it only follows the civil law book (Iswanto, 2013). Based on Inpres No. 1 in 1991, the Compilation of Islamic Law was issued to respond to several weaknesses in the reference sources for judges in settling cases. When settling issues by referring to the opinions of madhhab, it often creates different perceptions and less potential because it is no longer suitable for the times (Nurlaelawati, 2010).

Law No. 7 of 1992 is the first regulation that discusses Sharia banking in Indonesia, which is the beginning of the involvement of law in the banking sector. The law was amended by Law No. 10 of 1998, which clearly mentions the term "Bank based on Sharia principles". The issuance of this law became the starting point for the movement of Sharia economics in Indonesia. After that, the movement of Sharia economics continues to be developed by scholars, academics, and practitioners in the field of Sharia economics. Institutions in Indonesia began to form, such as the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), the Sharia Economic Society (MES), the Islamic Economics Association (IAEI), and others. Eventually, these institutions gave birth to technical institutions within the government, such as the Directorate of Sharia Banking at Bank Indonesia, the Directorate of Sharia Financing at the Ministry of Finance, and various bureaus at the Capital Market Supervisory Agency (BAPEPAM) (Iswanto, 2013).

As time goes by, institutions related to Islamic economic law have begun to develop extensively. The institutions that play the most apparent implementation of Sharia economic law in Indonesia, as mentioned above, are expected to become institutions that support the principle of supervision or hisbah in the field of Sharia economics. With that, humans will obtain success in both the world and the hereafter.

CONCLUSION

The Shariah Economic Law actually began with the establishment of Islam which was entrusted to Prophet Muhammad S.A.W. Although there were no written laws, the Prophet and the caliphs always enforced Islamic law in all human activities, including economic activities. This was marked by the establishment of councils and supervisory bodies established together with the companions and the caliphs. Islamic economics has rapidly developed over time, as society began to feel the justice in the principles applied, such as profit-sharing, which eventually made Islamic economic law must be in writing. It became a written law in the world since Islamic economics began to be recognized by the world and began to be recognized in Indonesia since the 20th century, where Islamic economics has become increasingly grounded in people's lives. And from several explanations above, it is explained and proven that the history of the Shariah Economic Law has existed since the emergence and real evidence of the development of Shariah economics. In carrying out the Islamic economy, which is always based on the principle of benefit, namely the prosperity of the world and the hereafter, written supervision is also necessary. This is to avoid gharar or uncertainty in muamalah. Since the Islamic evidence and law are already written in the Quran, Hadith, and fiqh books, then a majority Muslim country must have written regulations that are in accordance with Islamic Shariah.

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