

The Theory of Change in Law: Al-Syatibi's Philosophy of Law

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Abstract

The conception of change in law is something that cannot be denied, it is caused by the reality of a very complex era. The birth of Islamic thoughts has become its own style in responding to global challenges and at the same time providing scientific treasures in the field of Islamic law. As-Syatibi is a reformer figure in change in law, especially in the dimension of Islamic legal philosophy. Thus, the reflection of this study reveals Al-Syatibi's conception of thinking in the frame of change in law. The method in this study is a conceptual study with a library approach, which examines books and books related to the object of study. The results show that al-Syatibi's philosophical thought of law cannot be separated from the concept of *maslahat* embodied in *maqashid al-syariah* by being seated at several levels of urgency, namely *dharuruyah*, *hajjiyah* and *tahsiniyah*. The conceptual framework of Al-Syatibi's thinking in the concept of change in law in achieving benefit. change in law must lead to human empowerment by reducing normativity and by bringing the law closer to its historical dimension.

Konsepsi perubahan hukum merupakan suatu yang tidak bisa ditolak, hal itu diakibatkan oleh realitas zaman yang sangat kompleks. Lahirnya pemikiran-pemikiran Islam, menjadi corak tersendiri dalam menjawab tantangan global dan sekaligus memberikan khasanah keilmuan dalam bidang hukum Islam. As-Syatibih merupakan tokoh pembaharu dalam perubahan hukum, khususnya dalam dimensi filsafat hukum Islam. Maka refleksi kajian ini mengungkap konsepsi berpikir Al-Syatibi dalam bingkai perubahan hukum. Metode dalam kajian ini merukan kajian konseptual dengan pendekatan kepustakaan, yang menalaah buku-buku dan kitab-kitab yang berkaitan dengan objek kajian. Hasil penelitian menunjukkan bhawa pemikiran filsafat hukum al-Syatibi tidak bisa dipisahkan dengan konsep *maslahat* yang termaktub dalam *maqashid al-syariah* dengan didudukkan pada beberapa tingkatan urgensi yaitu *dharuruyah*, *hajjiyah* dan *tahsiniyah*. Kerangka konseptual pemikiran Al-Syatibi

dalam konsep perubahan hukum dalam mencapai kemaslahatan. Perubahan hukum harus mengarah pada pemberdayaan manusia dengan mereduksi normativitas dan dengan mendekatkan hukum pada dimensi historitasnya.

Key words: *Change in law; philosophy; Islamic law.*

Introduction

Law is a normative dimension that cannot be separated from the historical dimension that surrounds it. In this context, it can be understood that even though the law functions as a normative foothold for humans in living their lives in an orderly manner, the law in a deeper meaning as part of human empowerment is very likely to change according to several considerations that surround it. Responding to this, Muhammad Abid al-Jabiri stated that change in law is a necessity so that the law can always exist in dialectic with the dynamics of human life which is very dynamic. What then needs to be considered in the change in law process is how to make changes that are carried out according to the basic principles of the existence of law in human life, either in a specific sense or in a general sense. What needs to be observed in the change in law process is to always position the Qur'an and hadith as references in realizing universal values such as justice, security, and mercy for humans.¹

What Muhammad Abid al-Jabiri stated regarding how the flexibility of the law in the locus of change to always accommodate various dimensions of human life which is very dynamic shows that the law always opens itself to dialectic with various aspects that surround it. The existence of change in law cannot be understood that the law has lost its normative dimension because it always opens itself to a cycle of change in human life because there is a spirit brought by a law. Law in its position as a material object is a very sacred thing with a normative dimension, but when law is seen from its formal object, in the process law, like it or not, must be understood as something very historical.

In addition, change in law also has a passion for legal reform which basically has several passions which Jalaluddin Rahmat, quoting Taufiq Abdullah, stated that there are two aspects that make reform a necessity which in this case, a) response to reality and certain actual demands, both concerning religious doctrines and social realities such as economics, politics and customs, b) as well as an attempt to translate Islam in a particular context, by emphasizing the relevance and

¹ Muhammad Abid al-Jabiri, "al-Isykaliyyat al-Ashlah wa al-Muashirah fi al-Fikr al-Arabi al-Hadits wa al-Muashir: Sirah Thabaqi am al-Musykil al-Tsaqafi," dalam *al-Turats wa al-Tahaddiyatal-Ashr*, (Beirut: Markaz Dirasat Wihdat al-'Arabiyah, 1990), p. 245

actualization of the ethical and moral principles of Islam itself.² The figure of al-Syatibi is a figure of Islamic thinker who has a philosophical thought of law that has constructive relevance to the theory of change in law. It is undeniable that it is necessary to raise the thoughts of figures such as al-Syatibi in order to find an alternative perspective in understanding the theory of change in law in a comprehensive, holistic, and inclusive manner. Al-Syatibi's philosophical thoughts regarding the theory of change in law need to be studied by looking at the constructive relations that are built on concepts and practices that mutually reinforce one another.

Discussion

Al-Syatibi's Philosophical Thoughts of Law

Al-Syatibi whose full name is Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lakhmi al-Syatibi, does not have a clear place and date of birth due to the lack of references that reveal the place and date of birth of the figure who inspired the legal philosophy. However, lately many have tried to identify his place of birth by referring to his name "*al-Syatibi*" with an area in an area in eastern Spain called Sativa which in Arabic pronunciation becomes Syatiba. Regardless of whether the area really became the birthplace of al-Syatibi, but it is clear that the place certainly has a certain relationship in the traces of his intellectual journey or at least when he was not born in the area, but al-Syatibi had lived there. As for the death of al-Syatibi, it is stated that he died on 8 Sha'ban 790 H and was buried in a place in Granada.³

In his intellectual journey, al-Syatibi has provided a strong philosophical footing in the application of law with all the dynamics that surround it. What is done by al-Syatibi is a very constructive effort so that the law, especially Islamic law, can always be carried out by Muslims in their profane chambers of life as a form of self-servitude to Allah swt.⁴ In describing the thought of al-Syatibi's legal philosophy, Moh. Toriquddin describes that al-Syatibi put forward the purpose of Allah swt. in the application of benefit-based sharia which is the magnum opus of his legal philosophy thought into four parts which in this case is God's goal in establishing law (*al-qashdu al-syar'i fi> wad'i al-syari'ah*), Allah's purpose in establishing the law is to be understood (*al-qashdu al-syar'i fi> wad'i al-syari'ah li al-ifha>m*), the purpose of Allah

² Jalaluddin Rahmat et.al., Prof. Dr. Nurcholis Madjid: *Jejak Pemikiran dari Pembaharu sampai Guru Bangsa*, (Yogyakarta: Pustaka Pelajar, 2003), p. 332

³ Moh. Toriquddin, *Teori Maqashid Syariah Perspektif al-Syatibi*, (De Jure: Jurnal Syariah dan Hukum Vol. 6 No. 1 2014), p. 34

⁴ Fathurrahman Djamil, *Filsafat Hukum Islam*, (Jakarta: Logos, 1997), p. 12

swt. in determining the law is to be borne with all the consequences (*al-qashdu al-syar'i fi wad'i al-syari'ah li al-taklif bi muqtadlaha*), as well as the purpose of Allah swt. when entering mukallaf in sharia law (*al-qashdu al-syar'i fi dukhuli al-mukallaf tahta ahkami al-syari'ah*).⁵ Various purposes of Allah swt. in the application of the law, it shows how the legal position becomes a kind of set of values which is full of normative, theological, or juridical messages, which regulates a constructive relationship between Allah swt. as *al-Khaliq* and humans as *al-makhluq*. What is stated by al-Syatibi with his legal philosophy thought above seems to refer to the ontological and epistemological dimensions of the application of law.

In his axiological framework, al-Syatibi argues that the application of law is applied to realize several ethical and aesthetic frameworks which in this case are, a) safeguarding religion, b) safeguarding the soul, c) safeguarding the soul, d) safeguarding property, e) and protecting offspring.⁶ The various purposes of applying the law in its axiological framework as expressed by al-Syatibi can be described as follows:

a. Protecting religion

Religion is a normative theological framework that connects humans to their God. Through the Shari'a which is an inseparable part of the law, humans can draw closer to Allah swt. This can be understood from the name "sharia" which one of the etymological meanings is the source of water. The same is true of the legal position as a source of human footing in carrying out their daily lives. With the existence of sharia as an inseparable part of the law, religion will still exist because its practical manifestations in everyday life are clearly visible. With the law that guarantees people have religion, their religion will be protected from all forms of intimidation in the name of religion which may only be based on a partial understanding of religion.

b. Protecting soul

The human soul is an inseparable part of the axiological framework of the application of Islamic law in al-Syatibi's philosophical thought of law. With the law, a person does not necessarily take actions that endanger human lives because this will have practical implications for him as well, for example the existence of qishash punishments for those who kill other people.

c. Protecting mind

Humans are intelligent creatures as stated in the Mantik Sciences that *al-insan huwa al-hayawan al-natiq*. Human reason is a problem that in al-Syatibi's

⁵ Moh. Toriquddin, *Teori Maqashid Syariah Perspektif al-Syatibi*, p. 34

⁶ Galuh Nashrullah Kartika Mayangsari R and Hasni Noor, *Konsep Maqashid al-Syariah dalam Menentukan Hukum Islam: Perspektif al-Syatibi dan Jasser Auda*, (al-Iqtishadiyah: Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah Vol. 1 No, 1 2014), p. 57

philosophical thought of law must be considered. Humans who have an awake mind will be able to manifest their primordial function as the caliph of Allah swt on earth. The existence of a clear framework for applying the law will in turn provide a common sense consideration for those who are related to the law that what is done is full of legal consequences.

d. Protecting property

Islam is a religion that highly respects the ownership of a person or community of certain assets that are his property. In this effort, the existence of a law will provide security related to assets, for example the punishment of cutting off hands for those who steal, fair and proportional distribution of assets in inheritance law, and the like.

e. Protecting offspring

In an effort to protecting offspring, Islam presents a legal framework that is in accordance with these efforts. This can be found, for example, by the law of marriage. With marriage, humans and their offspring will be maintained because they have a clear lineage.

In relation to efforts to understand Islamic legal philosophy within its framework which refers to an ontological, epistemological, and axiological framework, al-Syatibi argues that what must be done is:

- a. Performing an analysis of the words of commands and prohibitions
- b. Conducting a study of the illat of commands and prohibitions
- c. Analyzing the silence of syar'i in the provision of a law.⁷

What is stated by al-Syatibi shows the typology of legal philosophy that underlies his very comprehensive and holistic thinking in interpreting a legal phenomenon.

The Conceptual and Practical Framework of Change in Law Theory in al-Syatibi's Locus of Philosophy Thought of Law

Change in law is a phenomenon that is often found in the application of the law itself which is accompanied by several underlying considerations. The change in law implies the dynamics of the law in responding to human life which is very dynamic so that the law does not isolate itself from various normative frameworks that underlie its implementation. In responding to this, Ibnu Rusyd argues that the immanent dynamics in the character of a legal product shows the ability of the legal product to respond, accommodate, and answer every problem

⁷ Al-Syatibi, *al-Muwafaqat fi Ushul al-Syariah*, (Riyadh: Maktabah Riyadh al-Haditsah, n.d.), p. 104

that arises in human life which is very dynamic.⁸ In line with what was stated by Ibnu Rusyd, Moh. Dahlan argued that the law must have an adaptive and accommodative attitude related to the various legal phenomena that surround it. The spirit to be adaptive and accommodative to various legal phenomena surrounding the application of the law has also been implied in several verses of the Qur'an which incidentally are the *magnum opus* of Islamic teachings. Therefore, it is not an exaggeration to say that law was not created to be a rigid normative framework for dialectics with the various phenomena that surround it, but what happens is that the normative framework must be actively adaptive and accommodative related to various changes that occur in human life across space and time.⁹

Basically, what is referred to as change in law can be understood as an inseparable part of legal reform itself because a renewal requires a change regardless of whether the change is carried out in the form of changes that are whole or partial. In addressing how to reform Islamic law as an inseparable part of change in law itself, Ilyas Supena provides a set of methodical frameworks that characterize the development of reform in Islam which in this case is built on several methodical frameworks, namely:

1. The paradigm shift of reform in Islam from absoluteness to relativity

In this context, reform must be based on an understanding that in it there is a struggle between an absolute theological dimension and a relative anthropological dimension. When various absolute theological dimensions have begun to come into contact with various relative anthropological values, then immediately the study of various aspects of reform in Islam cannot be claimed as an absolute or ahistorical study. On the other hand, various aspects of reform in Islam have established themselves as relative and historical studies.

2. The paradigm shift of reform in Islam from textual to contextual

In this context, reform in Islam can be understood as a study of knowledge that is closely related to various social phenomena that are contextual in nature. Consequently, various aspects that are immanent in their implementation should not be confined to a text that is static and rigid to make dialectics with various social phenomena that surround them.

⁸ Ibnu Rusyd, *Bidayyah al-Mujtahid wa al-Muqtasid*, (Indonesia: Dar al-Kutub al-Arabiyyah, tt.), p. 2

⁹ Moh. Dahlan, *Abdullah Ahmed al-Naim: Epistemologi Hukum Islam*, (Yogyakarta: Pustaka Pelajar, 2009), p. 92

3. The paradigm shift of reform in Islam from atomistic to systemic-comprehensive

In this context, reform in Islam can be understood as a study of knowledge which emphasizes that its implementation is a phenomenon of scientific development involving various dimensional frameworks that are systemic-comprehensive. Therefore, the understanding must be done holistically (holistic) as parts that are related to each other, considering that atomistic understanding is very likely to lead to misinterpretations in its understanding.

4. The paradigm shift of reform in Islam from the theological ideal to the moral ideal

In this context, reform in Islam can be understood as a study of knowledge which emphasizes that its implementation is a scientific phenomenon that is full of moral values which basically have colored the social life system of Muslims. When the moral ideal is emphasized, its implementation will be able to have a constructive effect in transforming the value of the *ratio legis* which is immanent in it. What is different is when what is emphasized first is the theological ideal, then this will displace the existence of the *ratio legis*.¹⁰

In relation to al-Syatibi's philosophy of law related to the theory of change in law, human benefit is used as one of the pillars in the application of law. The logical consequence is that when a law is applied contrary to the benefit of human beings, it can be said as a condition that necessitates a change. Changes in this context can be understood as an effort to place the law in its normative-historical corridor as a forum for human empowerment towards benefit as illustrated in the concept of *fi al-dunya hasanah wa fi al-akhirah hasanah*. In describing how the concept of benefit forms al-Syatibi's philosophy of law, Adiwarman Azwar Karim suggests that al-Syatibi divides the level of benefit in human life into three levels, which in this case are:

- a. *Dharuriyah*. In this context, the existence of law in the midst of human life is closely related to the main dimensions of human life which in this case directs them to aspects that guarantee happiness in this world and the hereafter. In the process, there are five main objectives that must be used as a reference in the implementation of sharia as an inseparable part of the law which in this case are, 1) protecting religion, 2) protecting the soul, 3) protecting soul, 4) protecting property, 5) and protecting offspring. The consequence is that when the law is deemed to be contrary to the various objectives of the application of the Shari'a, it is very possible to change in law.

¹⁰ Ilyas Supena, *Rekonstruksi Epistemologi Ilmu-Ilmu Keislaman*, (Yogyakarta: Penerbit Ombak, 2015), p. 156-157

- b. *Hajjiyah*. In this context, change in law can be carried out to facilitate human life, eliminate various difficulties in their lives, and in particular to ensure the realization of the five objectives of implementing the Shari'a above which in this case are, 1) protecting religion, 2) protecting soul, 3) protecting mind, 4) protecting property, 5) and protecting offspring.
- c. *Tahsiniyah*. In this context, change in law can be carried out to open the way for humans to do the best or closest to perfection, both ethically and aesthetically, in maintaining the five objectives of implementing the Shari'a above which in this case are, 1) protecting religion, 2) protecting soul, 3) protecting mind, 4) protecting property, 5) and protecting offspring.¹¹

Referring to what Adiwarmarman Azwar Karim stated above, it can be seen that the aspect of human benefit is a consideration that underlies al-Syatibi's philosophy of law which allows a change in law to occur when there is some kind of consideration that strengthens the change with reference to the benefit aspect. The urgency of the benefit can be said to be something that is formed because of the critical awareness of humans that the purpose of law is to bring benefit in the midst of human life. In describing how a constructive relationship is built between change in law and the consideration of the benefit, Amir Syarifuddin argued that the presence of law in the midst of human life is to regulate various aspects which are very identical in nature to their existence as individuals and social beings so that in turn it will bring benefits in the midst of their lives.¹²

In its practical framework, the various considerations of benefit that underlie the application of Islamic law are very possible to change in law as long as it does not conflict with the basic law that has been qath'i in the Qur'an and hadith.

Conclusion

Al-Syatibi's philosophical thought of law cannot be separated from his efforts to place the law as a forum for human empowerment in achieving its benefit. In the process, maqashid al-syariah which consists of, a) protecting religion, b) protecting soul, c) protecting mind, d) protecting property, e) and protecting offspring who are seated at several levels of urgency, namely *dharuriyah*, *hajjiyah*, and *tahsiniyah*. The conceptual and practical framework of the theory of change in law in al-Syatibi's locus of philosophy of law shows that change in law is an effort that is identical to the effort to place the law as a forum for human empowerment in achieving its benefit. The change referred to here is sufficient to only be

¹¹ Adiwarmarman Azwar Karim, *Sejarah Pemikiran Ekonomi Islam*, (Jakarta: PT. Raja Grafindo Persada, 2012), p. 382

¹² Amir Syarifuddin, *Ushul Fiqhi I*, (Jakarta: Prenada Kencana Group, 2011), p. 231

understood as a change in law which reduces the normativity of the law, but it must be understood that the change in law is an attempt to bring the law closer to its historical dimension in human empowerment.

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