

Sociological Aspects in the Determination of Islamic Law

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Abstract

Islamic law, as inherent in legalizing a problem faced by society, is an interesting discussion in the reflection of religious law in society. How not, the problems faced by the community continue to grow and are always global, as a large current that must find a solution. The dialogue between the sociological aspect and the establishment of Islamic law is a discourse that continues to get attention and must get factual answers as a result of reformulation of Islamic law towards a better direction. This study is a conceptual study or literature review, which examines data from Islamic law books, books and journals that have relevance. The result of the research shows that, the constructive relation of Islamic law between the sociological aspect and its stipulation is something that cannot be separated. The determination of Islamic law, always considering the sociological aspects of society, shows that the law is for human beings, so it is not surprising that Islamic law is flexible and measurable. The implication that is born in the sociological aspect is the establishment of a sweet and elastic Islamic law determination while still paying attention to its normative and historical aspects.

Hukum Islam sebagai gaun yang melekat dalam melegalkan suatu problem yang dihadapi masyarakat, sanantisa menjadi perbincangan menarik dalam refleksi hukum agama di masyarakat. Bagaimana tidak, persoalan yang dihadapi oleh masyarakat terus berkembang dan sanatiasa menglobal, sabagai suatu arus besar yang mesti mendapatkan pemecahan. Dialog antara aspek sosiologis dengan penetapan hukum Islam, menjadi wacana yang terus mendapatkan perhatian dan harus mendapatkan jawaban faktual sabagai hasil

dari reformulasi hukum Islam kearah yang lebih baik. Kajian ini merupakan kajian konseptual atau kejian kepustakaan, dimana menelaah data-data dari kitab-kitab hukum Islam, buku-buku serta jurnal yang memiliki keterkaitan. Hasil penelitian menunjukkan bahwa, Relasi konstruktif hukum Islam antara aspek sosiologis dan penetapannya merupakan suatu yang tidak dapat dipisahkan. Penetapan hukum Islam, senantiasi mempertimbangkan aspek sosiologis masyarakat, hal itu menunjukkan bahwa hukum itu untuk manusia, maka tidak heran kalau hukum Islam sifatnya fleksibel dan terukur. Implikasi yang dilahirkan dalam aspek sosiologis adalah terbentuk penetapan hukum Islam yang dimanis serta elastis dengan tetap memperhatikan aspek normatif dan historisnya.

Key words: *Sociology; determination; Islamic law.*

Introduction

The existence of Islamic law descends from a theocentric dimension to an anthropocentric dimension that cannot be separated from the various sociological aspects that underlie it. This is emphasized by Abu Yazid who argues that Islamic law is a set of rules whose dictums are not only based on revelation through the rules of law determination, but also refer to social struggles for the implementation of the values of justice and universal benefit in society. Therefore, the determination of Islamic law requires a strong analytical tool against its two sources which in this case are revelation and social reality itself.¹ What was stated by Abu Yazid illustrates that the determination of Islamic law is a process that involves the systemic and hierarchical dimensions of normativity and history. The constructive relationship that builds the two, in turn, will have implications for the determination of Islamic law itself.

The determination of a rigid Islamic law for dialectics with various underlying sociological aspects will reduce the spirit brought by Islamic law as a forum for human empowerment which is expected to bring benefits. The same thing with what was conveyed by Moh. Mufid that the determination of Islamic law cannot be separated from various sociological aspects that underlie human life. The orientation of the determination of Islamic law must be built on the paradigm of humanist law setting and this can only be done when various sociological aspects that underlie human life can be accommodated which in turn gives birth to a framework for establishing Islamic law that is dynamic and elastic.² Therefore, it is

¹Abu Yazid, *Aspek-Aspek Penelitian Hukum* (Yogyakarta: Pustaka Pelajar, 2010), p. 18.

²Moh. Mufid, *Aspek Sosiologis Fiqih Imam al-Syafi'i: Suatu Analisis Pemikiran* (Syariah: Jurnal Hukum dan Pemikiran Vol. 16 No. 1 2016), p. 1

important to conduct a study on "Sociological Aspects in the Determination of Islamic Law" as a scientific effort in exploring the constructive relationship between the establishment of Islamic law and the sociological aspects that underlie it as well as the implications of sociological aspects in the establishment of Islamic law.

Discussion

Constructive Relationship between Islamic Law Determination and Sociological Aspect

Identifying how there is a constructive relationship between the establishment of Islamic law and the sociological aspects that underlie it, Khoiruddin Nasution divides the texts which are the theological normative foundations of Islamic law in two characteristics. Namely universal normative texts and temporal practical texts which in this case are universal normative texts with universal, principle, fundamental characteristics, and are not bound by context (time, place, situation, and the like). The second characteristic is temporal practical texts with detailed characteristics, applied, can be practiced in real life, and bound by context (time, place, situation, and the like).³ What was stated by Khoiruddin Nasution shows that the normative dimensions of Islamic law which are universal normative texts have several characteristics which in this case are:

a) Universal

Its universal nature, universal normative texts, as the name implies, indicate that Islamic law has a passion in providing enlightenment for all human beings in various across space and time. This is in line with the concept of Islamic teachings which is a mercy for the entire universe. In addition, with its universal spirit, universal normative texts require that what is contained in religious texts such as what is stated in the Qur'an or hadith is an ideal value to be realized in various dimensions of human life. It's just that when there are certain situations that are partial-atomistic in the application of Islamic law, the universal nature can change along with the different contexts of the application of existing Islamic law.

The universality of Islamic law, an example of the determination of the law "Qishash" in Islamic law can be stated. The *Qishash* law outwardly, stipulates punishment by giving a recompense like the murderer will be killed, breaking the head of another person by breaking the head of the perpetrator and so on, is a very cruel punishment. But in this way, it will save lives, property, and human rights in general, because it will create trauma for the person who will do the act. A more concrete phenomenon can be seen that in some countries there are people who are

³Khoiruddin Nasution, *Pengantar dan Pemikiran Hukum Keluarga (Perdata) Islam Indonesia* (Yogyakarta: Academia dan Tazafa, 2010), p. 102

dissatisfied with the legal sanctions (*uqubat*) given so that there is an attitude of distrust of legal officials and legal materials, eventually sometimes executions occur by taking steps to do it themselves without going through legal channels.

Then if the reason for taking life belongs solely to Allah, in fact in Islamic criminal law, its implementation is not carried out freely, such as mass actions carried out in several places against thieves. Execution remains with the government as an extension of Allah as the caliph in the world, and executions are carried out according to *syar'i* rules and are not the only form of execution in *qishas* but those who receive forgiveness from the family, will only be subject to a fine (*diyat*).

From this perspective, it can be said that the law of *Qishash* in the construction of Islamic law contains the value of justice and benefit for mankind, especially for victims of a crime. This is also in line with the logic of common sense that crime must be rewarded with crime as well as a form of "sanction". The intention is to provide a deterrent effect for perpetrators of crime and others so that there will be no more similar crimes committed in different times and contexts.

Teeth repaid with teeth in the construction of the law of *Qishash* is a form of manifestation of justice. If such sanctions are not desired, then it is not permissible to commit physical crimes to anyone. That is, if someone dares to commit crimes against others, then he must also have the courage to accept the consequences. That is the logic of justice at work in *Qishash* law. That is the logic of justice at work in *Qishash* law. Justice applies to all parties. From it, crime after crime is not what people will do it arbitrarily.

Such logic is easy to find in the concepts and ideals of *qishâsh* law in Islamic law. In simple terms *kisas* or *qisas* (Arabic: قصاص, *qishâsh*) is a term in Islamic law that means retaliation (to give an appropriate punishment), similar to the saying "a debt of life for a life". In the case of homicide, *kisas* law gives the victim's family the right to seek the death penalty for the murderer. *Kisas* comes from Arabic from the word صا which means looking for traces such as *al-Qashâsh*, while in terms of Islamic law it means that the perpetrator of the crime is repaid as he did, if he kills, he is killed, and if he cuts off his limbs, his limbs are also cut off. Meanwhile, Shaykh Shalih bin Fauzan defines it as: '*al-Qishâsh* is the act (revenge) of the victim or his guardian against the perpetrator of the crime the same as or the same as the act of the perpetrator earlier.'⁴

The law of *qishâsh* is prescribed in the Qur'an and Sunnah, among the arguments from the Qur'an is the word of Allah swt. in QS. al-Baqarah/2:178.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأَنْثَىٰ بِالْأُنْثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ

⁴John Rawls, *A Theory of Justice*, p. 11

وَأَدَاءُ إِلَيْهِ بِإِحْسَانٍ ۚ ذَٰلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ مِّنَ اعْتَدَىٰ بِعَدَاةِ اللَّهِ
فَلَهُ عَذَابٌ أَلِيمٌ

The translation:

O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother (i.e., the killer) anything, then there should be a suitable follow-up and payment to him (i.e., the deceased's heir or legal representative) with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.⁵

QS. al-Baqarah/2:179:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِيَ الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

The translation:

And there is for you in legal retribution (saving of) life, O you (people) of understanding, that you may become righteous.⁶

While the evidence from the Sunnah of which is the hadith narrated by Abu Hurairah R.A, Rasulullah *sallallaahu 'alaihi wa sallam* said:

الْعَمْدُ قَوْدٌ إِلَّا أَنْ يَغْفُوَ وَلِي الْمَقْتُولِ

The meaning:

“(Bagi yang) sengaja (melukai atau membunuh, hukumannya) ialah Qishash, kecuali jika wali yang terbunuh memaafkan.”

Selain itu, hadis Rasulullah saw:

مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يَفْتَدِيَهُ وَإِمَّا أَنْ يَفْتُلَ

The meaning:

“Whoever owns (self or family) is killed, then he (may choose) between two options: Take compensation (diyat), or kill (Qishash).”

One narration from Abi Suraih Al-Khuza'i RA, I heard the Messenger of Allah say:

⁵Kementerian Agama Republik Indonesia, *Asy-Syifa The Holy Qur'an: Al-qur'an Tajwid Warna & Kode Angka, Transliterasi Perkata dan Terjemah (Per Kata)*, p. 27.

⁶Kementerian Agama Republik Indonesia, *Asy-Syifa The Holy Qur'an...* p. 27.

مَنْ أُصِيبَ بِدَمٍ أَوْ خَبَلٍ -وَالْخَبَلُ الْجَرَّاحُ- فَهُوَ بِالْخِيَارِ بَيْنَ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَقْتَصَّ، أَوْ يَأْخُذَ الْعَقْلَ، أَوْ يَغْفُو، فَإِنْ أَرَادَ رَابِعَةً فَخُذُوا عَلَى يَدَيْهِ⁷

The meaning:

“Whoever gets blood (killed) or wounds (wounded), then he (may) choose one of three options: qishshash, take compensation (diyat), or forgive (without paying diyat), and if he chooses the fourth option (more than Qishash or diyat) then take his hand (forbid it).”

Of course, the existence of the law of qishas, which is prescribed by Allah swt., has a great wisdom. Some of these wisdoms are known to humans and some are only the secrets of Allah swt.

Some of the wisdom of Qishash in Islamic law, including: First; protect society from evil and detain anyone who will spill the blood of others. That is, Qishash is prescribed in Islam to prevent bloodshed among human beings while at the same time maintaining human life as servants of Allah. Therefore, Allah gives an illustration with His Word in Q.S al-Baqarah/2:179:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِيَ الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

The translation:

And there is for you in legal retribution (saving of) life, O you (people) of understanding, that you may become righteous.⁸

The second lesson of the Qishash law is to achieve justice and help the oppressed by making it easy for the victim's guardian to repay the perpetrator as he did to the victim. This second wisdom is prescribed by Allah swt in QS al-Isra / 17:33.

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا

The translation:

And do not kill the soul (i.e., person) which Allāh has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in (the matter of) taking life. Indeed, he has been supported (by the law).⁹

⁷Hadith narrated by at-Tirmidhi Number: 1409

⁸Kementerian Agama Republik Indonesia, *Asy-Syifa The Holy Qur'an...* p. 27.

⁹Kementerian Agama Republik Indonesia, *Asy-Syifa The Holy Qur'an...* p. 285.

The third lesson of the *Qishash* law is as a means of repentance and purification of the sins that have been violated, because *Qishash* becomes *kaffârah* (removing) the sins of the perpetrators. This is explained by the Prophet *sallallaahu 'alaihi wa sallam* in his words:

“You must pledge allegiance to me not to commit shirk, not to steal and not to commit adultery, not to kill your children, not to commit lies and to be disobedient in what is right. Whoever among you fulfills it, his reward is with Allah and whoever transgresses some of it and is punished in this world, then the punishment is an expiation for him and whoever violates it then Allah covers it; then the matter is left to Allah. If he wills, he will punish him and if he wills then forgive him.” (Narrated by Muttafaq 'alaihi).

This third wisdom aims to build human awareness of the atrocities committed against fellow human beings, so that Islamic law teaches repentance with full awareness that the act committed is something heinous and brings suffering to oneself and others. This wisdom is also a model for anticipating or preventing others from doing the same thing, by taking lessons from people who have committed these crimes.

However, the concept and ideals of *Qishash* law have contextualization space so that it is possible to apply legal sanctions in other forms. In the construction of Islamic criminal law (*Fiqh al-Jinayah*) there is also a legal hierarchy related to *jinayat* (crimes) committed by a *mukallaf*, namely *diyat* law. Therefore, the law of *Qishash* against *jinayat* is one of the legal sanctions stipulated and applied in Islamic law. There are still other aspects of legal sanctions for crimes. In essence, the value of justice can be realized in life with the existence of such a model and hierarchy of sanctions.

In this context, actually in Islamic law there is still room for contextualization related to the application of Islamic law. In the Indonesian context, for example, contextualization of the application of *Qishash* law in other forms and forms, such as prisons and others. Substantially, the model of punishment with imprisonment is intended to create and realize justice in life for those who have been wronged or persecuted. What is part of human nature is the desire to retaliate when their rights are violated or taken away with appropriate treatment. This is found in every human being regardless of time, place, ethnicity, and race.¹⁰

b) Principle

With its principled nature, universal normative texts have a set of ideal frameworks in the application of Islamic law. With its principled nature, the application of Islamic law is always associated with a strong grip. This can be seen, for example, when in a practical elaboration of its principled nature, Islamic law that must be built in the ethics of monotheism, for example, must refer to the locus

¹⁰Kholid Syamhudi, *Fikih Qishas*, <https://almanhaj.or.id/3121-fikih-qishash.html>, accessed on 22 May 2022 at 5.30 PM.

of human taboo on Allah swt. Aspects of monotheism which in Islamic teachings can be illustrated exactly as a root from a tree must be a strong foothold in the application of Islamic law.

In the case of *Qishash* law, as in the example of the universality aspect of Islamic law above, the principle aspect that is upheld in the *Qishash* law is to protect human life as a creature created by Allah swt. Socially, the law of *Qishash* is a firmness of principles outlined by Allah swt to ensure the survival of human life and at the same time avoid bloodshed between humans. This is in accordance with the words of Allah swt in Q.S al-Baqarah/2:179:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِيَ الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

The translation:

And there is for you in legal retribution (saving of) life, O you (people) of understanding, that you may become righteous.¹¹

The above verse contains the principle that Allah swt., is very protective of the human soul, so that the law for those who kill is strictly regulated to prevent widespread bloodshed between the families of the murder victims and the families of the murderers.

c) Fundamental

Its fundamental nature, universal normative texts can be said to be the foundation in the application of Islamic law. It is undeniable that one of the keys to the success of Islam as a religion in the context of modern human life today is the existence of various universal normative texts that serve as normative theological foundations in the application of Islamic law, especially what is contained in the Qur'an or hadith.

d) Not Context Bound

Its nature which is not bound by the context of time, place, situation, and the like, universal normative texts becomes a kind of value that still dwells in theocentric area. Theological normative messages in it are still very ideal, abstract, and universally applicable. Under these conditions, the existence of various contexts that manifest in the anthropocentric region has not yet bound the universal normative texts. But one thing is certain that these various characteristics are still in an area that necessitates a transformation into an anthropocentric area so that the normativity of universal normative texts, slowly but surely, will enter its historical territory as Islamic law is implemented.

Meanwhile, in relation to the historical dimension of Islamic law, which is textual, practical, temporal, it has several characteristics, which in this case are:

¹¹Kementerian Agama Republik Indonesia, *Asy-Syifa The Holy Qur'an...* p. 27.

1) Detailed

With its detailed nature, practical temporal texts examine various issues of Islamic law in detail according to the historical dimension of the issue they are studying. In this process, it is not surprising then that the temporal practical texts can only apply to the historical space that surrounds them and when these texts are applied in other contexts, their meanings can be different.

2) Specified

With its specified nature, temporal practical texts examine various issues of Islamic law in detail according to the historical dimension of an issue they study. In this process, each dimension of the application of Islamic law in its historical area is approached in atomistic parts to be further studied comprehensively and holistically.

3) Applicable

With its applied nature, temporal practical texts refer to the practical steps of how Islamic law is applied to real situations in profane human life. One thing that is certain is that when a value that used to have normative theological dimensions in the theocentric region still manifests as an ideal concept, its existence in the anthropocentric area when applied will definitely come into contact with various dimensions of human life that have different histories according to the historical space with all kinds of things. the characteristics that surround it.

4) Can Be Practiced in Real Life

With its nature that can be practiced in real life, temporal practical texts are very accommodating to the various realities of human life with all its historical dimensions where Islamic law will be applied. With the creativity of the human mind by using its various reasoning potentials, Islamic law is transformed in such a way with various considerations based on how to realize benefit in human life and prevent damage at the same time. With its nature that can be practiced in real life, temporal practical texts always emphasize how the application of Islamic law can prioritize prevention of damage to further strive to realize benefits in human life. Referring to the illustration where one space complements each other where the absence of damage necessitates the presence of benefit, it can be understood here that Islamic law applied to real life always tries to emphasize preventing the damage first. This also encourages the birth of a rule of applying Islamic law, namely "*dar'u al-mafasid muqaddam ala jalbi al-mashalih*" which means that rejecting mafsadat takes precedence over taking benefits.

5) Context Bound

Its context-bound nature such as time, place, situation, and the like, practical temporal texts requires that religious texts such as those in the Qur'an or hadith must always have a dialectic with the historical dimension of Islamic law itself. A simple illustration is when Islamic law with all its normative dimensions is described exactly as water that is refreshing and then there are several glass containers that have been filled with some drink powder, in this case the first glass contains coffee grounds, the second glass contains tea powder, and the third glass contains milk powder, then in any glass container the water was poured will produce a drink according to the drink powder that is already in it without having to eliminate the nature of the water which is basically refreshing. When the water was poured into the first glass it would produce a refreshing coffee drink, when the water was poured into the second glass it would produce a refreshing tea drink, and when the water was poured into the third glass it would produce a refreshing milk drink. Likewise, practical temporal texts that are very tied to the surrounding context will manifest according to that context in the historical area without having to reduce the normative area. This is where the constructive relationship between the establishment of Islamic law and the underlying social aspects is clearly illustrated.

In illustrating how the constructive relation between the stipulation of Islamic law and the social aspects that underlie it, especially in the existence of temporal practical texts, Khoiruddin Nasution argues that these temporal practical texts are closely related to the surrounding context so that differences in context will have practical implications for differences in human understanding of the texts that are used. as a reference in the application of Islamic law. This can be referred to in its historical framework when various texts in the Qur'an came down in the midst of people's lives during the revelation period which lasted approximately twenty-three years. In this process, the existence of Islam became a social phenomenon which in turn led to Islam as practical Islam or applied Islam. Referring to the existence of Islam as a religious teaching with a strong normative theological dimension with its normativity, it can be understood that some texts are valid throughout time with their universal character so that they are called universal normative texts, and some are an applicable or practical framework of these universal normative texts in response to Arab social life as the social background of revelation so that the text can be said to be a temporal practical text.¹²

¹²Khoiruddin Nasution, *Ushul Fiqhi: Sebuah Kajian Perempuan*, in Ainurrofiq (ed), *Mazhab Yoga: Menggagas Paradigma Ushul Fiqhi Kontemporer* (Yogyakarta: ar-Razz, 2002), p. 242.

Implications of Sociological Aspects in Determining Islamic Law

Islam is a divine religion that carries the concept of *rahmatan lil alamin*. This context is a necessity when Islamic law as a practical elaboration of the dimensions of Islamic teachings which include aqidah, sharia and morals must be able to understand various sociological aspects that underlie the determination of Islamic law itself. Islam and Islamic law are two entities that cannot be separated from each other as Yoseph Schacht emphasized that an understanding of Islam can only be understood by understanding its legal aspects and without understanding the aspects of Islamic law which are immanent in Islamic teachings, then it would be a waste of time,¹³ Islamic law as a conclusion.¹⁴ In line with what was stated by Yoseph Schacht, Eko Siswanto stated that Islamic law has several characteristics which in this case are the dimensions of sharia (having the characteristics of revelation) and fiqh (having the characteristics of *ra'yu*), divinity and humanity (faith and ikhsan, or aqidah and morals), as well as Islamic law of universal character (overcoming space and time, covering the fields of worship and muamalat in the broadest sense, retribution or sanctions in the world and the hereafter) and contextual (dynamic/flexible).¹⁵

With this spirit and characteristics, it can be understood that the establishment of Islamic law is a process that always accepts the implications of various sociological aspects that underlie it. Islam is believed to be a cooperative religion in responding to various things, including in responding to social and cultural phenomena which are a social-dialectical process and natural human creativity that absolutely do not need to be eliminated, considered enemies, and eradicated, but what must happen then is to become a partner and elements adopted selectively and proportionately.

The existence of a sociological aspect, this has practical implications for the determination of Islamic law which is built on various legal rules which in turn become an axiomatic reference in the determination of Islamic law as illustrated in the rule of law:

العادة محكمة

The meaning:

The customs is a guideline for determining law.

¹³Yoseph Schacht, *An Itrouduction to Islamic Law* (Oxford: Oxford University Press, 1996), p. 1.

¹⁴Arifin Sahaka, *Kritik Terhadap Hukum Islam (Ke Arah Rekonstruksi Epistemologis)*, "Al-Bayyinah 1.2 (2017), p. 87.

¹⁵Eko Siswanto, *Deradikalisasi Hukum Islam dalam Perspektif Maslahat* (Makassar: Alauddin Press, 2012), p. 14.

تغير الأحكام الشرعية بتغير الأزمان والأماكن والأحوال

The meaning:

Shari'a law can change with changes in time, place, and circumstances.

المعروف عرفا كالمشروط شرطا

The meaning:

Something that has become 'urf then can be a condition even though it is not recited.

Another manifestation of the implications of sociological aspects in the determination of Islamic law can be found from the concepts of *al-qaul al-qadim* and *al-qaul al-jadid* from Imam Syafi'i. In this concept, the implications of sociological aspects in the determination of Islamic law are illustrated, where what Imam Syafi'i did was colored by the accommodation of various sociological aspects that underlie the determination of Islamic law. Accompanied by the determination of laws based on *ra'y* (logical reasoning) which is based on the arguments that come from religious texts, the Qur'an, and hadith.¹⁶ The existence of *al-qaul al-qadim* and *al-qaul al-jadid* reflects that the determination of Islamic law always undergoes a very complex dialectical process with various social contexts that surround it. Although in conditions of debate among scholars in the meaning of an issue of Islamic law which is termed by Coulson.¹⁷

However, in the process the spirit of empowering Islamic law in presenting benefits in human life. Changes in the determination of Islamic law with all the reasons that underlie it including its sociological aspects are an unavoidable historical phenomenon for the sake of the continuity of the dialectical power of Islamic law to the surrounding reality. In response to this, Abdullah Ahmed al-Naim, the products of Islamic law which were understood by scholars in the past when applied in the present context, these various products must be reviewed and adapted to their dialectical power with the present context. When what happens is an attempt to maintain what was in the past without any constructive efforts to relate it to the present context, what happens next is that the spirit of human empowerment with all the potential that is immanent (understanding) in its existence will be lost.¹⁸

¹⁶Jaih Mubarak, *Modifikasi Hukum Islam: Studi tentang Qaul Qadim dan Qaul Jadid* (Jakarta: PT. RajaGrafindo Persada, 2002), p. 186.

¹⁷Baharuddin Basettu, "Konflik dan Ketenangan dalam Hukum Islam Antara Idealisme dan Realisme." *Al-Bayyinah* 1.2 (2017), p. 31.

¹⁸Abdullah Ahmed al-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1996), p. 19-20.

Conclusion

The stipulation of Islamic law has considered the sociological dimension, it is urgent as part of the compatibility between the stipulation of law and the needs of the community. The constructive relationship between the stipulation of Islamic law and the sociological aspects that underlie it can be understood as an inseparable relationship where the stipulation of Islamic law always strives to present a dynamic and elastic paradigm of Islamic law stipulation in accommodating various underlying sociological aspects. The implication of the sociological aspect in the determination of Islamic law is the formation of a paradigm for the establishment of Islamic law which tries to describe the normative dimensions of Islamic law to its historical dimensions dynamically and elastically. Therefore, it is not impossible, a formulation of Islamic law was born by considering the sociological aspects in determining the law.

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