Paper

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THE CONTEMPORARY ISLAMIC LAW PARADIGM IN INDONESIA

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Abstract

This paper by using the ijtihad paradigm of maqâshid al-syarî'ah of Jasser Audah and the descriptive-analytical approach, would like to emphasize that the role of religion and economic welfare are two things that cannot be separated. Although in practice these two things often face obstacles, especially in the matter of diversity in religious life because of the superficial ijtihad paradigm of Islamic law. Based on the contemporary paradigm that seeks to provide new criteria in the conception of qath'i al-dlilalah and dlanni al-dlilalah, it can be stated that the contemporary Islamic law paradigm that needs to be built must be based on (a) the development of citizens' welfare Muslims, but also must be the same as non-Muslims because of that we need to carry out financial and economic reforms (al-ishlâh al-mâlî wa al-iqtishâdî); (b) protection of freedom of thought (hurriyah al-tafkîr) and freedom of religion (hurriyah al-i'tiqâd) is an important aspect that must be maintained to guarantee the peace and harmony of the nation's life in the territory of Indonesia. Therefore, the religious and economic aspects must be prioritized for their protection and safety.

[Artikel ini dengan menggunakan paradigma ijtihad maqâshid al-syarî'ah Jasser Audah dan pendekatan deskriptif-analitis, hendak menegaskan bahwa peran agama dan kesejahteraan ekonomi merupakan dua hal yang tak bisa dipisahkan. Meskipun pada praktiknya kedua hal tersebut seringkali menghadapi kendala terutama dalam masalah keragaman hidup beragama

karena adanya paradigma ijtihad hukum Islam yang dangkal. Dengan berlandaskan pada paradigma kontemporer yang berusaha memberikan kriteria baru dalam konsepsi qath'i al-dlilalah dan dlanni al-dlilalah maka dapat dinyatakan bahwa paradigma hukum Islam kontemporer yang perlu dibangun harus berdasarkan pada (a) pembangunan kesejahteraan warga negara tidak bisa hanya berpihak kepada kaum Muslim, tetapi juga harus sama dengan kaum non-Muslim karena itu kita perlu melakukan reformasi keuangan dan perekonomian (al-ishlâẖ al-mâlî wa al-iqtishâdî); (b) perlindungan kebebasan berpikir (ẖurriyah al-tafkîr) dan kekebasan beragama (ẖurriyah al-i'tiqâd) merupakan aspek penting yang harus dijaga untuk menjamin kedamaian dan keharmonisan hidup bangsa di wilayah Indonesia. Karena itu, aspek agama dan ekonomi harus mendapat prioritas untuk dijamin perlindungan dan keselamatannya.]

Introduction

Human life problems cannot be separated from various challenges, both those coming from national and international. One of the most complicated problems of human life faced by humans is the problem of religious dogmatism which later has caused various conflicts both intellectually and physically. History proves that the more dogmatic of a religious group, the lower the appreciation and respect for human values.[1]

The history of wars among religionists have been experienced in the Islam and the Western also occurred because it began with dogmatic religious ideas which eventually led to physical conflict among religionists. Although it is admitted that religious factors are not the only trigger for conflicts between religionists, at least religious dogmatism has contributed to the occurence of it. The great Islamic countries such as Pakistan, Afghanistan, Iraq, Syria, Egypt, Libya, Sudan and Nigeria have experienced conflicts that have caused casualties among their citizens, both between them and outside parties. In the Indonesian context, after

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[1] Abdurrahman Wahid, *Pergulatan Negara, Agama, dan Kebudayaan* (Jakarta: Desantara, 2001).

almost 70 years of independence, the conflict occurred fifteen times including conflict between religious groups in the country, because it was caused by ideological problems and injustice. "When in Poso, Ambon and Aceh, they felt there was injustice.[2] These socio-political and economic problems were later influenced by religious dogmatism, resulting in widespread and widespread conflict which caused many casualties. Related to religious dogmatism, Muhammad Jusuf Kalla, who is also the Vice President of the Republic of Indonesia, also explained:

> If there is an ISIS movement, suicide bombings, there are people who kill others. "Why did that happen? Because there are parties that sell cheap heaven. So the essence of suicide bombing depends on radicalism that sells cheap heaven. "... Selling cheap heaven...just simply saying that by killing or being killed will go to heaven, because they are not looking for money." Why is not looking for money? Because you want to die, not looking for a position, because you are ready to die, what he does is entering heaven."[3]

What was conveyed by Jusuf Kalla was one of the concrete forms of religious dogmatism which was then used to mobilize and encourage the birth of social movements in the form of conflict. This is a problem that has become an internal challenge for Indonesian religious, including Muslims. This condition also became an anxiety of M. Amin Abdullah in addressing the reality of religious life in his own internal circles as a challenge. According to him, namely the challenge of within the Islamic group itself occurred due to the existence of religious dogmatism and sacralization of Islamic religious symbols, so that it caused stagnation of thought Islam, and the Islamic paradigm becomes binary opposition: conservatism or secularism.[4]

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[2] *Indonesia Negara Berpenduduk Muslim Paling Aman*, *http://www.wapresri.go.id/ indonesia-negara-berpenduduk-muslim-paling-aman/*, accesed 22 February 2017.

[3] 22.

[4] M. Amin Abdullah, *Studi Agama: Normativitas dan Historisitas* (Yogyakarta: Pustaka Pelajar, 1996).

Meanwhile, the challenges born from the outside world, namely the Western world, are the presence of global cultural currents which then lead to the fusion of cultural barriers and religious values, resulting in the birth of a purely pure secular human life as seen from the history of the Universal Declaration of Human Rights (DUHAM) which places humanity as the top priority by ignoring other life values, even the religion which has been the guideline of humanity has been abandoned and replaced with human values declared by DUHAM.[5] The birth of secular humanism is inseparable from the paradigm of modern Western science which has rational logic including:

> Other than religion, science only knows the efficient cause of an event. If a question is asked as to why many people die of cancer, doctors will not submit answers like so that we know God plan, this is the final cause, the goal, but the things that cause cancer. Science is more concerned with the concept of causality compared to the concept of finality.[6]

In answering the problem of human life, M. Ira Lapidus revealed that in the Islamic world there had been efforts that had a humanitarian and reformist spirit, although it was still trapped in the hegemony of the paradigm of modernization-westernization as had been done in Iran by Shah Reza Pahlevi when he has power with firm power.[7] In other words, efforts to dismantle religious dogmatism also fell on modernization-westernization dogmatism. History shows that religious dogmatism does not only occur in the field of faith, but can also occur in the study of Islamic law and *ushul fikih*.

In answering the problem of Islamic legal dogmatism—one of the reformers of international Islamic law—Abdullahi Ahmed An-Na'im,

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[5] Tahir Mahmoud (ed.), *Human Rights in Islamic Law* (New Delhi: Jamia Nagar, 1993), p.188-123; Haryatmoko, "Apa yang Tersisa dari Agama" Majalah *Basis*, No. 05-06 May-June, 2002.

[6] Wedra Aprison & Junaidi, "Pendekatan Saintifik: Melihat Arah Pembangunan Karakter dan Peradaban Bangsa Indonesia", *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, Vol. 12, No. 2, December 2017, p. 521.

[7] Ira M. Lapidus, *Sejarah Sosial Umat Islam*, trans. Ghufron A. Mas'adi (Jakarta: Rajawali Press, 1999), p. 46-7.

illustrates that the *ijtihad* paradigm of Islamic law that has been carried out by clerics (*ulama*) so far honestly has a weak point because even though there is an attempt to reform Islamic law through the study of *mashlahah*, but it is still limited by the provisions of clear and definite texts. So that even though there is an effort by *ushul fikih* clerics like Imam At-Thufi to place human benefit as the sole foundation of Islamic law development, but because not renewing in the field of ontology of Islamic law, precisely the conception of *qath'i al-dlilalah* and *dlanni al-dlilalah*, then the spirit of renewal of Islamic law has a impasse.[8]

The reason for the importance of this study was that there was a impasse which later became one of the causes the birth of "alternative movements" that always felt dissatisfied with the real conditions of Muslims. Abdurrahman Wahid said that they are looking for alternatives by trying to return to the heyday of Islam with the spirit of Islamic legal formalism, for example the desire to build *khilafah Islamiyah* (Islamic state) in Indonesia which has often been voiced by Hizbut Tahrir Indonesia (HTI) and Majelis Mujahidin Indonesian (MMI).[9] The results of Robert W Hefner's study entitled, "Muslim Democrats and Islamist Violence in Post-Soeharto Indonesia" revealed that Laskar Jihad (LJ) led by Dja'far Umar Thalib was an Islamic *da'wah* movement that had a strong political motive from its inception.[10]

This article—using the *ijtihad paradigm maqâshid al-syarîah* of Jasser Audah—seeks the *ijtihad* paradigm of contemporary Islamic law which

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[8] Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation; Civil Liberties, Human Rights and International Law* (Syracuse: Syracuse University Press, 1990), p. 166-168; Lalu Supriadi, "Konsep Maslahah Mursalah Najm Al-Dîn Al-Tufi", *Jurnal Penelitian Keislaman*, Vol. 8, No. 1, January, 2012, p. 87.

[9] Abdurrahman Wahid, *Sekadar Mendahului: Bunga Rampai Kata Pengantar* (Bandung: Penerbit Nuansa, 2011), p. 161-162.

[10] Syarifuddin Jurdi, *Pemikiran Politik Islam Indonesia: Pertautan Negara, Khilafah, Masyarakat Madani dan Demokrasi* (Yogyakarta: Pustaka Pelajar, 2008), p. 418-428; Robert W. Hefner, "Muslim Democrats and Islamist Violence in Post-Soeharto Indonesia", Robert W. Hefner (ed.), *Remaking Muslim Politics: Pluralism, Contestation, Democratization* (Pricenton: Pricenton University Press, 2005), p. 288.

was built to provide new breakthroughs in answering the collapse of humanitarian issues and state.

History of the Struggle of Human Rights in the Global Era

In the middle ages, human values were not a concern for human civilization. The history of human life is only measured by the standards of religious dogma even though it is contrary to human and rationality values. The humanitarian movement that wants to put mankind as the center of his civilization culminated after the birth of the DUHAM on 10 December, 1948. The basic rights of human life then become standardization in the development of legal regulations and the order of life of human civilization. Those basic human rights later became the authoritative foundation that replaced the authority of religious law norms.[11]

Academically, humans are encouraged to be the center of their civilization and then the religious privileges are questioned, because with the intellectual authority possessed by humans, according to Immanuel Kant, humans were able to determine their life existence well. In this context, the de-ontological ethics paradigm that gives moral autonomy,[12] then forms a new history than before that based on teleological ethics.[13]

Why is there a change of authority from religious norms to the norm of human rationality? This is inseparable from Immanuel Kant's thought, which then influenced the paradigm of human life to free himself from the support of religious norms which he considered for centuries to have hindered human progress, equality of human life, and civilization of science. Therefore, the birth of Human Rights (HAM) which began

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[11] Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation…,* p. 166.

[12] Immanuel Kant, *Critique of Judgement,* trans. J.H. Bernhard (New York: Hefner Press, 1951), p. 326-7.

[13] Moh Dahlan, "Konsep HAM Menurut Pemikiran Abdullahi Ahmed An-Na'im," *thesis,* (Yogyakarta: IAIN Sunan Kalijaga, 2003); Moh Dahlan, "Diskursus Hak Asasi Manusia dalam Islam: Pemikiran An-Na'im dan Ali Syariati", *Al-'Adalah: Jurnal Kajian Keislaman dan Kemasyarakatan,* Vol. 13, No. 1, June 2010, p. 97.

with the existence of the *Magna Charta* in 1215 in England has given birth to human idealism to be able to live fairly and equally before the law, which is standardized with adagium: equality before the law. After going through a process of struggle for human life which takes quite a long time, then after the French Declaration in 1789, the conception of equality before the law was then developed into three forms: freedom of expression, freedom to carry out the freedom of religion, protection of property rights.[14]

Furthermore, according to Rhoda E. Howard, basic human rights must be fulfilled and protected, because without fulfillment and protection, humans cannot possibly live as human being.[15] However, what was stated by Rhoda E. Poward was without the basis of normative authority including religious authority, let alone the foundation of religious normative goals. Likewise, the human rights scientific paradigm only focuses on rights. Therefore, Baharuddin Lopa explained that the basic rights of human life must be fulfilled and protected by responsibility, so that the impossibility of human life as a human being is not only understood as a right of life, but also human responsibility held.[16] In the paradigm of Islamic law, humanity is not only required to keep and protect the basic rights of life but also must do and carry out the responsibilities that are borne.

The birth of the civilization history[17] of secular-humanism

[14] *Ibid.*; Baharuddin Lopa, *Al-Qur'an dan Hak-Hak Asasi Manusia* (Yogyakarta: PT. Dana Bakti Prima Yasa, 1996), p. 2-3.

[15] Rhoda E. Howard, *HAM; Penjelajahan Dalih Relativisme Budaya,* trans. Nugraha Katjasungkana (Jakarta: Grafiti, 2000), p. 1; *Kumpulan Prangkat HAM Internasional, Panduan Pelatihan Monitoring, Investigasi dan Advokasi HAM,* Pontianak 3-9 Juli 2001, by Insist, CHP & Jaringan Edukator HAM Kalimantan.

[16] Baharuddin Lopa, *Al-Qur'an dan Hak-hak Asasi Manusia....,* p. 1.; Naimatul Atqiya, "HAM dalam Perspektif Islam, *Islamuna,* Vol. 1, No. 2, December 2014, p. 171-173

[17] Haedar Nashir argues that "Civilization is the culmination of the culture of a people, society and nation. Civilization is the highest culture both spiritually and physically, in value and in action, in a system and practice. Islam in the heyday is called civilization because in all fields of life reaches the highest peak, when Western society

civilization of the West which marked its peak with the DUHAM has become a challenge for religionists, especially *ushul fikih* clerics who have competencies in the field of Islamic law *ijtihad*. Thus, the universality of humanity values by the DUHAM is also a challenge in renewing Islamic law.

With the challenges of global culture that want to put man as the center of his life and national challenges with the diversity of religious life, does the *ushul fikih* paradigm that has developed so far be able to provide answers to the problems of the plurality of life of the Indonesian?

This problem became the "homework" for *ushul fikih* clerics because the breakthrough of the *ijtihad* benefit paradigm presented by reformers of Islamic law, turned out to be unable to answer global problems of both religious and pluralism freedom.

The Problem of Diversity Muslims in Indonesia

Indonesia is a pluralistic country with the largest Muslim population that organizes a democratic system well, compared to general elections (*pemilu*) carried out in several countries such as the Philippines, Pakistan, India, Afghanistan, Thailand and other countries which sometimes take many casualties. According to M. Jusuf Kalla, Indonesia as a democratic country with the ideology of Pancasila in the implementation of the two elections can run peacefully and safely.[18]

and in other parts of the world are still left behind. But in the modern world, civilization of Western society, China, Japan, South Korea, for example, is now entering a high civilization of its culture. While Muslims are still lagging behind. Culture is the overall knowledge of human beings as social beings that they use to understand and interpret the environment and experience and become the basis for realizing their behavior. Culture as a human knowledge system is clues, recipes, plans and strategies consisting of cognitive models that are sourced from and enveloped by values that live in ethos (ethos) and the mind (world view) the collective human, whose use by the perpetrators to interpret and deal with their environment is done selectively." Haedar Nashir, "Islam di Dunia Nyata," *Suara Muhammadiyah,* No. 3, 2012.

[18] This was stated by Vice President Jusuf Kalla when opening the 2014 Ulama National Conference and the Great Nahdlatul Ulama Conference at the PBNU Building, Central Jakarta, Saturday, 1 November 2014. Indonesia is the Safest Muslim

M. Jusuf Kalla explained that large Islamic countries such as Pakistan, Afghanistan, Iraq, Syria, Egypt, Libya, Sudan and Nigeria experienced conflicts that caused casualties among their citizens, both between them and outside parties. This is different from Indonesia, despite having a large population, various ethnicities and languages, as well as various religions there is no conflict.[19]

Historically, these conditions were inseparable from the process of spreading Islam from the beginning in the archipelago which is running acculturatively. This acculturative and peaceful approach to *da'wah* was recognized by a one of Indonesianis such as M.C. Ricklefs giving an explanation that the process of propagating Islamic teachings runs and develops through acculturative ways even though the pressure points are different for example between the Java region and the Sumatera region, where the Sumatera region is more formalistic than in the Java which is characterized by Islamic symbols such as the recitation of the creed or circumcision.[20]

Meanwhile, the saga of the *Babad Tanah Jawi* provides a description that the spread of Islam in Java is more sufistic and be entrenched. Thus, the symbols of Javanese cultural traditions are more clearly accommodated such as the tradition of *Sekatenan* (from initially *syahadatain*) originating from Javanese culture which was later Islamized by Sunan Kalijaga.[21]

The results of Abdurrahman Wahid's studies describe that Sheikh Arsyad al-Banjari carried out *ijtihad* in the development of Islamic law by considering the local traditions of the people of Banjar Central and South Kalimantan. Therefore it appears that the process of applying Islamic law is peaceful and accommodating to local culture without reducing legal idealism Islam, namely *maqâshid al-syarî'ah* which aims to build and

Population Country, *http://www.wapresri.go.id/indonesia-country-Muslim-population-most-safe/*, accessed 22 February, 2017.

[19] *Ibid.*

[20] M C Ricklefs, *Sejarah Indonesia Modern 1200-2008*, trans. PT Serambi (Jakarta: PT Serambi, 2008), p. 5-6 & 15.

[21] *Ibid.*, p. 18.

realize the welfare of society both physically and mentally.[22]

The spreading of Islamic law happens acculturatively and peacefully is then continued by the clerics of *ushul fikih* today who put forward the moderation paradigm of Islamic law in the governance of social and political life both national and international. The commitment and enthusiasm of Indonesian clerics as KH. Ma'ruf Amin (MUI), KH. Said Aqil Siradj (PBNU), and Haedar Nashir (PP. Muhammadiyah), and other scholars who also adhere to the moderating paradigm of Islamic (legal) teaching. Besides that, Indonesian Muslims also have a commitment and enthusiasm to uphold and practice the content of the main sources of Islamic law in the Qur'an in daily life that guarantees the safety of human values, upholds the values of social piety, prioritizes the defense of the weak, prioritizes defensive advocacy, and prioritizes poor defense. Not the values of greed such as collecting assets and calculating them.[23]

How is the paradigm of Muslims and clerics in the Indonesia pluralism context? They must stick firmly to the main sources of Islamic law: the Qur'an and *Sunnah* without having to leave the traditional values ('*urf shahih*) in Indonesia. The '*urf shahih* which is the way of life for nation-state is Pancasila. Although through long debates, history has proven that it's became a common home in the diversity frame. One of the largest socio-religious organizations that recognized Pancasila as a single state principle was the NU in the NU Congress (1984) at the Salafiyah Syafi'iyah Islamic Boarding School (*pesantren*) Asembagus Situbondo, East Java under the command of KH. Ahmad Siddiq as *Rais*

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[22] Abdurrahman Wahid, *Islamku Islam Anda Islam Kita: Agama Masyarakat Negara Demokrasi* (Jakarta: The Wahid Institute, 2006), p. 169-170, 250-251; Mahfudz Junaedi, "Fikih Indonesia: Tinjauan Kritis Epistemologi", *Syariati: Jurnal Studi al-Qur'an dan Hukum*, Vol. 2, No. 01, Mey 2016, p. 51.

[23] See Joko Widodo's presentation when officially opening the 26t[h] National Musabaqah Tilawatil Quran (MTQ) and the Washatiyyah International Islamic Conference in Mataram, Lombok, West Nusa Tenggara. Opening of National MTQ held on Saturday, 30 July, 2016. *Indonesia Sumber Pemikiran Islam Dunia, http://ksp.go.id/indonesia-sumber-pemikiran-islam-dunia/*, accessed 14 September, 2017.

'Am PBNU and KH. Abdurrahman Wahid as Chairman of PBNU.

The efforts carried out basically cannot be separated from the present challenges that are increasingly complex and increasingly complicated in this global era. Religionist in Indonesia have challenges with the reality of their diversity of life. The plurality of life of the Indonesian people including religious life also faces challenges. Religionist in Indonesian including Muslims do not face challenges with the reality of their multiple lives, but also encounter problems. After almost 70 years of independence, 15 conflicts that occurred in the country were caused by ideological problems and injustice. When in Poso, Ambon and Aceh, they felt that there was injustice. In this context, religious issues in Poso and Ambon also contributed to the complexity due to the dogmatic understanding of religion by selling cheap prices for heaven. According to M. Jusuf Kalla, "*Selling cheap heaven... just simply saying that by killing or being killed will go to heaven, because they are not looking for money," Why not work for money? Because he wanted to die, not looking for a position, because he was ready to die, what he did was entering heaven.*"[24]

> The clash of Islam and Christian in Ambon are actually inseparable from the design of the scenario where the rivalry in the struggle for public office then escalated into a religious conflict. The climax of conflict in Maluku itself occurred in the period 1999-2002 which began with the events of Bloody Maluku on 19 January, 1999 which claimed many casualties. The conflict itself was resolved through the Malino I and II Agreements at 2002-2003 which were represented by community leaders both Muslim and Christian. However, the conflict resolution of religious anarchism in Maluku is the representation and revitalization of local wisdom in the form of inter-country pela (village) in Maluku to raise each other to become sibling relations.[25]

This historical condition is also an encouragement for state leaders and religious leaders to always encourage understanding or *ijtihad* law

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[24] *Indonesia Negara Berpenduduk Muslim Paling Aman*, *http://www.wapresri.go.id/indonesia-negara-berpenduduk-muslim-paling-aman/*, accessed 22 February 2017.

[25] Wasisto Raharjo Jati, "Kearifan Lokal sebagai Resolusi Konflik Keagamaan", *Jurnal Walisongo*, Vol. 21, No. 2, November 2013, p. 395.

with moderate insight as Joko Widodo, M. Jusuf Kalla, and clerics in Indonesia. Furthermore, Haedar Nashir added the need for the existence of a superior civilization of Muslims, so that with their superiority, they were able to contribute positively and progressively in advancing religious, national and state life.

> Now, what is important and prioritized is how Muslims throughout the face of the earth prove to the world that they are far superior in all spheres of life compared to other nations. Muslims, including the state and the Islamic system in any form, are not just names and formality but really show the best in reality. That is Islamic civilization, not normative Islam or formalism which stops above a row of terms.[26]

The development of superior Muslim civilization through the *ijtihad* paradigm of contemporary Islamic law have become important in this time. Especially when faced with the current movement of the Majelis Mujahidin Indonesia (MMI), Laskar Jihad (LJ), and Hizbut Tahrir Indonesia (HTI), which they are as a strong Islamic movement. This is a challenge in itself, especially after the reformation of their movements is increasingly free in Indonesia.

According to Nilda Hayati, since the arrival of this movement to Indonesia, its activities have been beginning underground for 10 years later. It is because HTI was born under Soeharto regime which banned all forms of movement that were not Pancasila. After the reformation, HTI can carry out its activities openly, this is indicated by the holding of open discussions about sharia to various regions such as to several regions in Sumatera, Kalimantan, and Sulawesi. They also actively spread the idea of *khilafah* in various universities through the network of Lembaga Dakwah Kampus (LDK). However, the development of HTI is still in the process of developing cadres (*tasqîf*) and fostering people in order to strengthen the party's body. According to HTI's belief, Islamic law is impossible to be implemented perfectly except by the existence of *khilafah* and a *khalifah* who will apply Islam to Muslims in the pledge to

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[26] Haedar Nashir, "Islam di Dunia Nyata…,"

be heard and obeyed on the basis of the Qur'an and *Sunnah*. Restoring Islamic life and expanding Islamic *da'wah* is the limitation of the purpose of establishing HTI.[27]

As a political movement with an Islamic ideology, HTI always tries to restore formalistic Islamic life both in the field of dogma or Islamic law and carry out Islamic *da'wah* to establish *khilafah*, *dar al-Islam*, and Islamic society, so that all matters of life are carried out in accordance with the laws their version of the sharia is formalistic under the auspices of the Islamic State: "A country led by a *khalifah* who is pledged to implement the law based on the Qur'an and *Sunnah* and carry out the message to the whole world with *jihad*."[28]

Towards the *Ijtihad* Paradigm of Contemporary Islamic Law

During doing *ijtihad* of Islamic law, the clerics have classified the legal sources that are *qath'î al-dilâlah* and *zhannî al-dilâlah*. The clerics of *ushul fikih*—such as Imam Al-Syafi'î, Abdul Wahhab Khallaf, and Muhammad Abu Zahrah— in understanding *qath'î al-dilâlah* and *zhannî al-dilâlah* suggest that *qath'î al-dilâlah* is an Islamic legal passage that has no understanding or meaning of more than one, while *zhannî al-dilâlah* is an Islamic legal passage that has more than one understanding or meaning.[29] The *ijtihad* paradigm of traditional Islamic law, an understanding of Islamic legal texts focuses on textual understanding. Therefore, even though there is a liberal idea as Imam at-Thufi states that, within the

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[27] Nilda Hayati, "Konsep Khilafah Islâmiyyah Hizbut Tahrir Indonesia: Kajian Living al-Qur'an Perspektif Komunikasi", *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, Vol. 12, No. 1 June 2017, p. 175; Ahmad Bunyan Wahib, "Being Pious Among Indonesian Salafis", *Al-Jāmi'ah: Journal of Islamic Studies*, Vol. 55, No. 1, 2017.

[28] Nilda Hayati, "Konsep Khilafah Islâmiyyah....", p. 175; Zaprulkhan, "Relasi Agama dan Negara dalam Perspektif Islam", *Jurnal Walisongo*, Vol. 22, No. 1, Mey 2014, p. 114-118.

[29] Moh Dahlan, "Paradigma Usul Fikih Multikultural di Indonesia", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 12, No. 1 June 2012, p. 7; 'Abd al-Wahhâb Khalâf, *Mashâdir al-Tasyrî' al-Islâmî* (Kuwait: Dâr al-Qalam, 1972), p. 19, 25; Muhammad Abû Zahrah, *Ushûl al-Fikih* (Beirut: Dâr al-Fikr al-'Arabî, 1957), p. 218, 227.

scope of *muamalah* and *adat*, if there is a conflict between the passage and *maslahah*, *maslahah* takes precedence in the manner of the *takhsis* and *bayan*, but they are still trapped in the *qath'i* conception hegemony and the *dhanni*, so the breakthrough had an impasse.[30]

To answer that impasse, the contemporary *ushul fikih* clerics such as Abdullahi Ahmed An-Na'im, Nurcholish Madjid, and Masdar F. Mas'udi put forward a new conception in the problems of *qath'î al-dilâlah* and *zhannî al-dilâlah*, especially sacred texts (*nash*) both the Qur'an and the *Sunnah*. Both of them like a two sides of a coin that cannot be separated, the Qur'an is the final textual word from Allah.

Then in carrying out his mission, Muhammad often gave an explanation of the interpretation of the Qur'an and added a decision known as the *Sunnah*, both through statements and actions. In this case, An-Na'im argues that the *qath'î al-dilâlah* sacred texts (*nash*) of Qur'an and *Sunnah* are legal provisions that have universal meaning or that have a humanitarian and inclusive spirit as the eternal and fundamental message of Islam. Whereas the sacred texts of the Qur'an and the *Sunnah* which are *zhannî al-dilâlah* are legal provision that has clear meaning as stipulated in inheritance law or the law of cutting hands for thieves in the Qur'an or other legal decision that are closely related to cultural reality. Likewise Masdar F. Masudi stated that the verses of the Qur'an which are universal-fundamental (*muhkamat*) are sacred texts that explain the substance of the law, while the verses of the Qur'an which explain the technical-practical rules are known as *mutasyabih* verses.[31]

Similarly for Nurcholis Madjid, the sources of Islamic law, both the Qur'an and the *Sunnah* which contain universal values and are identical with modernity, are the main guideline or *qath'î al-dilâlah*. Although in

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[30] Lalu Supriadi, "Konsep Maslahah Mursalah Najm Al-Dîn Al-Tufî", *Jurnal Penelitian Keislaman...*, p. 87.

[31] Masdar F. Mas'udi, *Islam & Hak-Hak Reproduksi Perempuan* (Bandung: Mizan, 1997) p. 50-51; Muhaki, "Pembaruan Epistemologi Fikih Islam Liberal", *Pancawahana: Jurnal Studi Islam* Vol. 12, No. 1, April 2017, p. 40.

the implementation of legal teachings it still requires knowledge and understanding of the socio-cultural environment of Indonesian society as a whole, including in the political environment within the framework of the concept of nation-state and modernitation.

Meanwhile, sacred texts of Islamic law with cultural and technical characteristic must be re-examined or refreshed to capture the humanitarian and universal spirit that they contain because that is known as the *zhannî al-dilâlah*.[32]

Towards the Contemporary Islamic Law Paradigm in Indonesia

Indonesian Muslims will arrive at a superior civilization if they prioritize the realization of Islamic law messages that are not only formalities but also substantive with the *ijtihad* paradigm of contemporary Islamic law. The separation between sacred and profane in the Western, basically cannot be separated from the scientific paradigm that they built. *First*, observing opponents of authority. Western science is not based on authority but only based on observing natural or social phenomenon.[33] Meanwhile, the religion knowledge or knowledge of Islamic law must rest on authoritative sources: the Qur'an and the *Sunnah*.

Second, physical autonomy. Science also departs from a philosophy of nature as an autonomous entity, which has its own laws, so that it does not need to be grounded and there is no influence from subtle spirits.[34] Whereas, knowledge of Islamic law must have a knowledge base and be influenced by *maqâshid al-syarî'ah*.

Third, the concept of purpose is eliminated in science. While knowledge of Islamic law has a goal to be achieved which is known as *maqâshid al-syarî'ah*. Western science emphasizes the concept of causality

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[32] Zainal Abidin, "Teologi Inklusif Nurcholish Madjid; Harmonisasi Antara Keislaman, Keindonesiaan, dan Kemodernan", *Jurnal Humaniora,* Vol. 5, No. 2, October 2014, p. 665-684; Tri Astutik Haryati, "Islam dan Pendidikan Multikultural", *Tadrîs,* Vol. 4, No. 2, 2009, p. 105.

[33] Wedra Aprison & Junaidi, "Pendekatan Sainstifik…," p. 520.

[34] *Ibid.,* p. 520.

compared to finality.[35]

On a practical level, the implementation of the *'urf shahih* with the insight of benefit will be able to build a paradigm of contemporary Islamic law in Indonesia that is plural based on the *ijtihad* paradigm of contemporary Islamic law. Jasser Audah argues that the doctrine of Islamic law must be able to build superior civilizations and nations by still applying humanity, universal and social values which include:

First, *al-ishlâḫ al-mâlî wa al-iqtishâdî* (financial and economic reform)[36] must be done by prioritizing the defense of the weak, the needy, and the poor without having to distinguish between Muslims and non-Muslims. All of the citizens must obtain justice and equal treatment in the law. This condition is different from the traditional Islamic law civilization which prioritizes Muslims than non-Muslims, so they are first class citizens who must get more treatment than another.

The national economic development program executes by the Jokowi-JK government in basically is an empirical form of the application of superior Islamic law civilization by giving equal treatment in the economic field to all citizens in accordance with the spirit of universal Islamic law doctrine. One example of financial and economic reform that is a serious concern of the Jokowi-JK government program is its concern for the weak in traditional markets in both Muslim and non-Muslim regions majority. The revitalization of traditional markets in all regions of Indonesia, it has become one of the evidence of economic reform that is known in the *maqâshid al-syarî'ah* as *hifdz al-mal*, departing from the middle to lower classes.[37]

There are four principles of market revitalization action by Jokowi-JK. The first is *physical revitalization*. Includes repairs and improvements in

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[35] *Ibid.*, p. 521

[36] *Maqâshid al-Syarî'ah: Dalîl li al-Mubtadiin* (Beirut: Maktabah al-Tauzi' lil al-'Alam al-'Arabi, 2011), p. 24.

[37] "Mensukseskan Program Revitalisasi Pasar Tradisional," *http://presidenri.go.id/artikel-terpilih/mensukseskan-program-revitalisasi-pasar-tradisional.html,* accessed 14 September 2017.

the quality and physical condition of buildings, green systems, connecting systems, sign/bill systems and open spaces area. Second is *revitalization of management*. The market must be able to build management that clearly regulates aspects such as: the rights and obligations of traders, procedures for placement, financing, facilities that must be available in the market, operational standards for market service procedures. Third is *economic revitalization*. It's about regional physical improvement in the short term, to accommodate informal and formal economic activities (local economic development). Finally, *social revitalization*. Creating an environment that is interesting and has a positive impact and can improve the dynamics and social life of the community/citizens.[38]

The principle of development that the weak priority and evenly distributed in accordance with the spirit of the *Four Pillars of Nation and State Life* which states that the principle of the Unitary State of the Republic of Indonesia (NKRI) is affirmed in the fourth paragraph of the 1945 Constitution. Indonesia and all of Indonesia's bloodshed. Therefore, equitable development throughout the NKRI is a constitutional mandate, namely promoting public welfare.[39]

Secondly, hurriyah al-tafkir wa al-i'tiqâd (freedom of thought and belief/ religion)[40] is a concern of *maqâshid al-syarî'ah*, so that the guarantee of religious safety to understand and practice it must be guaranteed by the state. Likewise freedom of speech. The *Four Pillars of Nation and State Life* book suggests that the intellectual life of the nation, so that freedom of opinion is an instrument to achieve the life of a nation or an intelligent and knowledgeable people. The embodiment of religious freedom can be extracted from the spirit of the first precepts (*sila*) of Pancasila, belief in the one supreme God.[41] Therefore, in accordance with *maqâshid al-syarî'ah*,

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[38] *Ibid.*

[39] Pimpinan MPR & Tim Kerja Sosialisasi MPR Periode 2009-2014, *Empat Pilar Kehidupan Berbangsa dan Bernegara* (Sekretariat Jenderal MPR-RI, 2012), p. 162-163.

[40] Jasser Audah, *Maqâshid al-Syarî'ah...*, p. 26

[41] Pimpinan MPR dan Tim Kerja Sosialisasi MPR Periode 2009-2014, *Empat Pilar...*, p. 163; Yunahar Ilyas, "Ihsan dan Akhlak Mulia", *Suara Muhammadiyah; Meneguhkan*

the Indonesian state must be able to guarantee the existence of religious freedom and tolerance for religious life that is civilized.

> The manifestation of the first precepts in the articles of the constitution also implies that the state must guarantee upright religious tolerance as stipulated in article 29 paragraph (1) and paragraph (2) which guarantees freedom to embrace and implement whatever religion is believed by every citizen country. In addition, the role of the state must also be increased in its responsibility to hold interfaith dialogues or forums as a concrete step in the state's obligations.[42]

In an effort to safeguard and guarantee the existence of moderation, tolerance and freedom of religion, the constitution guarantees it. Indonesian religious, especially Muslims, must be able to face various challenges, both national and international levels, such as acts of intolerance, radicalism and violent extremism, acts of terrorism in the name of religion. Therefore, to protect and guarantee religious safety or religious freedom, it is necessary to strengthen law enforcement, revise the anti-terrorism law, and increase the capacity of intelligence authorities. In addition, the soft power approach is also very much needed by using a religious and cultural approach, involving community participation, especially religious organizations, running deradicalization, rehabilitation and reintegration programs in the community.[43]

In the shell of the soft power approach, Lukman Hakim Saifuddin, The Minister of Religious Affairs, also stated that social interaction in a pluralistic society requires bridges that can bring together differences to avoid conflict. The bridge that can be brought together here is the teaching values of Islamic law that guarantees freedom of thought, religious freedom, and religious tolerance. This can be achieved if Muslims use universal and humanist Islamic law sacred texts. Therefore, ethnocentrism, misunderstanding of culture values, stereotypes, religion,

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dan Mencerahkan, No. 4/102, 16-28 February, 2017, p.18.

[42] *Ibid.*, p. 45.

[43] *Masyarakat Inggris Harus Lebih Mengenal Indonesia, http://ksp.go.id/masyarakat-inggris-harus-lebih-mengenal-indonesia/*, accessed 14 September 2017.

ideology, and others can be found a solution by in-depth study of cases that have occurred and map the problem and choose the solution. With the spirit of a universal and humanist source of Islamic law, the socio-religious problems faced by a pluralistic Indonesian society will be able to overcome it well and continue to refer to the main source of Islamic law, namely Qur'an and the Sunnah. In addition, the contemporary fikih paradigm that is built will be able to build Muslim civilizations that have a high dose of contextuality, and even have suppleness that will be able to provide solutions to contemporary problems such as conflicts between religions.[44] However, even though for example there is a conflict, but if it is in a positive corridor, then it is categorized as a maturing process of religious life and also at the same time a process of maturing thinking in the presence of speech freedom.

> The occurrence of various conflicts is actually to test humans to continue to improve their quality of life. Because the plurality of life is indeed *sunnatullah* (Q.S. al-Maidah [5]: 48). As an implication, each religious group, ethnic group, nation has various differences of interests and views; *walikullin wijhatun huwa muwalliha* (Q.S. al-Baqarah [2]: 148) and the difference in interests will trigger tension and friction. Hereby, people must learn a lot and continue to compete in goodness (*fastabiqul al-khairat*) so that social dynamics lead to a civilized life.[45]

Freedom of opinion is guaranteed by the state constitution, so that with the freedom of opinion, the Indonesian nation will have a critical and progressive reasoning. The critical and progressive reasoning will not be possible without education. In *maqâshid al-syarî'ah*, this field of education falls into the category of *hifdz al-'aql*. Therefore, legal regulation in Indonesia regulates the need for equity and expansion of access to education because it is an investment of human resources for progress

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[44] Lukman Hakim Saifuddin, *Sambutan Menteri Agama RI pada Seminar Pembukaan Halaqah Fikih Kebhinekaan*, Maarif Institute Jakarta, 24 February 2015.

[45] Abdul Mustaqim, "Konflik Teologis dan Kekerasan Agama dalam Kacamata Tafsir Al-Qur'an", dalam *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, Vo. 9, No. 1, June 2014, p. 159.

and welfare of the nation and state.

The constitution of the Republic of Indonesia number 20 of 2003 about the National Education System formulates the functions and objectives of national education that must be used in developing education in Indonesia. 3 Article of the National Education System states, "National education functions to develop and shape dignified national character and civilization in order to educate the nation's life, aiming at developing potential students to become human beings who belief in the one supreme God, noble, healthy, knowledgeable, capable, creative, independent, and a democratic and responsible citizen." The aims of national education is a formula for the quality of Indonesian people that must be developed by each education unit. Therefore, the formulation of national education goals must be the basis for the development of cultural education and the nation's character.[46]

To encourage human beings to produce creative and contextual work, both individually and groups, it is recommended to use a learning approach that produces problem-based work, project based learning.[47] In this context, freedom of opinion is prioritized because without the broad freedom of opinion, creativity and contextuality will not be born.

Based on this explanation, various problems faced by the nation will be resolved by the existence of the ijtihad paradigm of contemporary Islamic law that emphasizes the auto logical foundation of Islamic legal texts that are insightful to human and universal values which are believed to be able to bring together the various differences that occur in Indonesia. This is one of solutions to face the plurality of life of the Indonesian people, namely by building a shared awareness about the importance of finding common ground of diversity that exists, rather than contrasting different points. This kind of awareness is important to grow and develop to build tolerance and moderation of life between religious people, so that social harmony and welfare of life can be realized well. Therefore, for all citizens without discriminating on religion, all receive equal and just legal treatment in contemporary Islamic law discourse in the direction of

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[46] Wedra Aprison & Junaidi, "Pendekatan Saintifik…, p. 509.

[47] *Ibid.*, p. 510.

developing a system of economic life that is fair and siding with the weak to realize social welfare, giving space for freedom of thought realizing the nation's intelligence, and providing space for religious freedom to realize a moderate, tolerant and harmonious religious life.[48]

Conclusion

Based on above description this paper can be concluded that, *first*, Muslims must be able to build a spirit of superior Islamic law renewal, so there must be a combination of the spirit of the fabrication of Islamic law and the reality of the life of the Muslims it faces. Through the *ijtihad* paradigm of contemporary Islamic law, it can be stated that the contemporary Islamic law paradigm that needs to be built based on (a) the development of citizens' welfare cannot only side with the Muslims, but also must be the same as non-Muslims. Development of economic welfare or *hifdz al-mâl* through *al-ishlâh al-mâlî wa al-iqtishâdî* (financial and economic reforms) must be carried out fairly and evenly without discriminating between religious backgrounds; (b) protection of the mind (*hifdz al-'aql*) through education which gives space to freedom of thought (*hurriyah al-tafkîr*); (c) religious protection (*hifdz al-dîn*) through the provision of space for religious freedom (*hurriyah al-i'tiqâd*).

Second, to achieve the order of life as intended in the first part, Muslims must be able to dismantle the impasse in placing humanitarian values through the *ijtihad* paradigm of contemporary Islam which seeks to provide new criteria in the matter of the conception of *qath'i al-dlilalah* and *dlanni al-dlilalah* by Abdullahi Ahmed An-Na'im, Nurcholish Madjid, and Masdar F Mas'udi, not of Abdul Wahhab Khallaf and Muhammad Abu Zahrah.

Thus, the *ijtihad* paradigm of *maqâshid al-syarî'ah* that portrays the relationship between religion and economic well-being as the main

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[48] Ngainun Naim, "Islam dan Pancasila: Rekonstruksi Pemikiran Nurcholish Madjid", *Epistemé: Jurnal Pengembangan Ilmu Keislaman*, Vol. 10, No. 2, December 2015, p. 445.

part that must be fulfilled becomes an undeniable fact because some conflicts in a world with religious motives including in Indonesia have a close relationship with economic problems, so economic and religious problems must be a serious concern to build an essential welfare both physically and mentally.

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