

Application of Fiqh Siyasah in the Field of Constitution

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Abstrak

One example of the scope of fiqh siyasah is dusturiyah or constitution. The constitution is a political system norm that includes the system of government, division of power, human rights, citizenship, and others. The application of fiqh siyasah in the field of constitution is controversial in various countries where the majority of people are Muslim because it can cause discrimination against minority groups in society. An example of the application of fiqh siyasah in the field of constitution is the Constitution in Indonesia. The method used in this article is descriptive qualitative, which is a literature study whose data is obtained from books, journals, theses, in which there is a discussion of the application of fiqh siyasah in the field of constitution. The result obtained is that one of the main challenges is balancing the application of fiqh siyasah with modern democratic principles. Countries that implement sharia often face conflicts between sharia and human rights and individual freedoms.

Keywords: Fiqh Siyasah, Constitution, Politics

INTRODUCTION

In Article 1 paragraph (3) of the 1945 Constitution, it is explained that Indonesia is a country based on law. This indicates that all aspects of community life are regulated and run in accordance with the laws that have been made by the authorities. The purpose of the law is to provide equal legal guarantees and protection to every citizen, so that there is no discrimination against anyone in society.¹ Therefore, Indonesia is considered a state of law that upholds justice and equality for all levels of society. Studies that study political science and law can be called fiqh siyasah.

Etymologically, Fiqh means understanding or comprehension. However, according to the term, Fiqh is the study of the laws of sharia in Islam that must be practiced and made based on clear arguments. Meanwhile, the word siyasah has its origins in Arabic, namely "sasa" which means to manage or organize. Siyasah can also be interpreted as government policy in politics. Through this explanation, it can be concluded that Fiqh siyasah is the science that pays attention to the affairs of the people and the state, with all forms of laws, regulations, and policies made by the holders of power in accordance with Sharia to achieve the benefit of the people.²

Fiqh siyasah is a series of discussions that cover aspects of governance, politics and power control in line with the principles of Islamic law. Fiqh Siyasah studies various matters

¹ Mas Budi, "Tinjauan Fiqh Siyasah Terhadap Peran Pemerintah Desa Dalam Menegakkan UUD 1945 Pasal 28D Ayat (1) Tentang Perlakuan Yang Sama Di Hadapan Hukum," *Skripsi*, 2022, 1–75, <http://www.nber.org/papers/w16019>.

² Nahikabillah Rabba, "Tinjauan Fiqh Siyasah Terhadap Putusan Mahkamah Konstitusi Nomor 2/PUU/XX/2022 Tentang Uji Materi Undang-Undang Pilkada," 2023.

related to the interests and needs of the people, including state affairs, human rights, and security and welfare. Therefore, it is very important for policy makers to understand the relevant principles and provisions in Fiqh siyasah in order to make the right decisions and provide great benefits to society. In addition, the important role of scholars in Fiqh siyasah is to provide guidance and advice to policy makers on matters relating to problems in society with reference to religious, legal and moral aspects. Fiqh siyasah is used in studying political and legal sciences, one of which is its application in the field of constitution.

The constitution sets out how the institutions of government are established, governed, operated and checked by society. Democratic principles, such as equality in human rights, are also balanced in the constitution itself. At the state level, the constitution is the main guide in shaping government policies and decisions. Laws or regulations made by government institutions must comply with the constitution.³ In the context of fiqh siyasah, the constitution must reflect Islamic principles and provide support for laws or policies based on Islamic teachings. Therefore, in applying fiqh siyasah in the constitutional context, it is necessary to pay attention to the harmonious relationship between the constitution and sharia law in order to carry out state duties with good order and justice and not reduce human rights. The purpose of writing this article is to better understand the application of fiqh siyasah in the field of constitutional law.

METHOD

The method used in the article with descriptive qualitative, namely literature study. Literature study is a method used in a writing by collecting library data, reading and processing research data which will later be reviewed. The data collected comes from books, journals, websites, and articles that explain the application of fiqh siyasah in the field of constitution.

RESEARCH RESULTS

Theoretical Basis of Fiqh Siyasah

Fiqh siyasah is a branch of Islamic law that deals with political and governmental issues, such as the legitimacy of government, the rights of citizens, and the responsibilities of leaders. The main principles of fiqh siyasah include justice, deliberation (shura), and the application of sharia in the governance of the state.⁴ On constitutional relations Fiqh siyasah offers a framework for integrating sharia into the constitution. This includes framing the rights of citizens and principles of social justice in the constitution in line with sharia.⁵

Application in the Constitution

Integration of Sharia Principles, the research identified that several Muslim countries have adopted sharia principles in their constitutions. For example, Saudi Arabia implemented a legal system based on fiqh siyasah, with sharia as the main source of law.⁶ Case Examples, the research includes case studies in countries such as Iran and Pakistan, where the principles of fiqh siyasah are integrated into their legal systems and constitutions. For example, in Iran, the constitution states that laws must be in line with sharia, while in Pakistan, sharia is used as one of the sources of law.⁷

Challenges and Obstacles

One of the main challenges is balancing the application of fiqh siyasah with modern democratic principles. Sharia-compliant countries often face conflicts between sharia and

³ Afifatur Rosidah, "Analisis Fiqh Siyasahdusturiyah Tentang Mahkamah Konstitusi Sebagai Negative Legislator Dalam Sistem Ketatanegaraan Di Indonesia," *Skripsi*, 2019, 1–13.

⁴ Al-Qaradawi, Y., *Fiqh al-Zakat: A Comparative Study*, Dar al-Taqla, 1996, h. 45-47.

⁵ Hallaq, W. B., *An Introduction to Islamic Law*, Cambridge University Press, 2009, h. 123-125.

⁶ Mawdudi, S. A., *Towards Understanding Islam*, Islamic Publications Ltd., 1960, h. 78-80.

⁷ Qutb, S., *Fi Zhilal al-Qur'an*, Maktabah al-Shamila, 1991, vol. 3, h. 150-152.

human rights and individual freedoms.⁸ Various interpretations of fiqh siyasah and its application to the constitution have often led to controversy. Different interpretations of sharia affect the way constitutions are drafted and implemented.⁹

Recommendation

For a more effective application of fiqh siyasah in the constitution, it is important to adopt an inclusive approach that takes into account the diversity of views in society.¹⁰ Encouraging dialog between scholars, jurists, and policymakers can help create a constitution that reflects the principles of fiqh siyasah while still adhering to the principles of democracy and human rights.¹¹

DISCUSSION

Constitutional Terms in Fiqh Siyasah

In Fiqh Siyasah, Islamic constitutional law, the term constitution is used as *dusturi*. The origin of the word comes from Persian and means someone who has authority in politics and religion. While in Arabic, the word *dustur* has the meaning of principle, basis, or guidance. In the context of the term, *dustur* refers to a collection of rules that regulate the basis and cooperative relations between citizens in a country, both written in the constitution and unwritten in the form of conventions.¹² The constitution covers the system of government, the division of powers, human rights, citizenship, and so on. The constitution is the supreme law of the land, above other laws such as statutes, court decisions and local regulations.

The constitution plays an important role because it governs the administration of the state based on Islamic principles. This field of study focuses on the application of Islamic law in political and social contexts. It provides guidance on how to run the state and build a system that upholds Islamic values and ethics. The constitution serves as a framework that outlines the basic principles and laws that govern the state based on Islamic teachings. The principles embedded in the constitution ensure that the actions of the government are in line with Islamic values and principles. The constitution is therefore an essential component of any Islamic state, as it guarantees that governance is based on Islamic law and principles.

The issue of constitution-making is closely related to the source and rule of law in the country, including its source material, history, publication and legal interpretation. Source material includes the material in the constitution relating to the relationship between the government and the governed. The formation of a constitution cannot be viewed in isolation from the history, culture and politics of the country concerned. Therefore, the material in the constitution must be in line with the aspirations and spirit of the people in the country. In addition, the constitution must also have a strong legal basis in order to have an effective legal force in regulating and binding the people of the country. Jurists also have the authority to understand and explain some things when the basic law is implemented.¹³

Application of Fiqh Siyasah in the Constitution

In the application of fiqh siyasah in the field of constitution, it is necessary to pay attention to the principles of the constitution that can provide suitability and consistency

⁸ Siddiqi, M. N., *Muslim Jurisprudence and the Qur'an*, Islamic Publications, 1980, h. 89-91.

⁹ Khan, M. S., *Islamic Jurisprudence*, Islamic Foundation, 1990, h. 102-104.

¹⁰ Hallaq, W. B., *Sharia and the Modern State: The Emergence of the Sunna Law*, Cambridge University Press, 2009, h. 200-202.

¹¹ Al-Qaradawi, Y., *Islamic Law and the Modern State: A Comparative Study*, Dar al-Taqwa, 1998, h. 30-32.

¹² Harun, "Konstitusi Dalam Perspektif Hukum Islam," *Suhuf* 24, no. 1 (2012): 26–38.

¹³ Syaddan Dintara Lubis Ramadani, Mari'e Mahfudz Harahap and Syad, "Konstitusi Indonesia Dalam Perspektif Fiqh Siyasah," *As-Sais: Jurnal Hukum Tata Negara/Siyasah*, 2021, 1–8.

with the policies made. Here are some constitutional principles that must be considered in the implementation of fiqh siyasah:¹⁴

1. Justice: The principle of justice must absolutely be the basis for policy-making and law enforcement in government. All citizens have equal rights and fair treatment by the government, without discrimination based on religion, race, ethnicity, gender, sexual orientation, or any other factor.
2. Human Rights: The constitution should contain guarantees on basic human rights, such as the right to order and welfare, freedom of expression, belief, broadcasting, and the pursuit of life. Freedom of belief involves freedom of religion or choice of belief, and protects human rights and dignity.
3. Democracy: The constitution should include the basic principles of democracy, such as freedom of opinion, vote, assembly and public expression. In this regard, public responsiveness and participation are essential for their voices to be heard in the policy-making process and the execution of law implementation.
4. Legal Regularity: The constitution should provide a clear, certain and accurate legal foundation. This includes legal standards and procedures, thereby minimizing the possibility of departing from the limitations provided by the constitution. In the application of fiqh siyasah, the law must be relevant and contextual in order to promote conformity in the effective implementation of the law.
5. Transparency and Accountability: The government must be committed to fulfilling the principles of transparency and accountability in the government system through open policy-making processes and information disclosure to the public. The existence of internal and external monitoring mechanisms can encourage the effectiveness of better government implementation.

These concepts should guide the government in setting policies that are not only in accordance with Islamic law, but also with the basic principles of the constitution.

The application of fiqh siyasah in the field of constitution has become a controversial topic in countries where the majority of the population is Muslim. Even in non-Muslim countries, the application of fiqh siyasah in the constitution also invites considerable debate. However, on the other hand, some people also support the application of fiqh siyasah as the basis for the formation of the constitution because they view that the principles of fiqh siyasah have moral values based on Islamic teachings and can create better governance. Here are some applications of fiqh siyasah in the field of constitution in various countries:¹⁵

1. Indonesian
Indonesia is a Muslim-majority country, but its governance is based on a secular democratic system. Even so, the Indonesian government provides considerable space for the application of the principles of fiqh siyasah in the formation of public policy. One example of the application of fiqh siyasah in Indonesia is in the formation of Law Number 1 Year 1974 on Marriage. This law contains an article stating that a husband may practice polygamy, but on condition that he must obtain permission from the first wife and must be able to fulfill all family needs fairly.
2. Saudi Arabia
In Saudi Arabia, a monarchy with a Muslim majority, fiqh siyasah is used as the basis for the constitution. Most of the laws in Saudi Arabia are based on the Holy Quran and the traditions of the Prophet Muhammad. The government of Saudi Arabia is headed by the King and run by the Council of Ministers. The country's laws and regulations are based on Shafi'i Fiqh and are heavily influenced by the Islamic conservatism of the people.
3. Turkey

¹⁴ Hosen Nadirsyah, *Muslim Legal Thought and Governance: Fiqh Siyasah and Islamic Statehood* (Brill, 2014).

¹⁵ Atu Karomah, "Konstitusi Dalam Islam," *Al-Qisthas: Jurnal Hukum Dan Politik* 7, no. 1 (2016): 67–79.

Turkey is a Muslim-majority country, but it has a secular government. Even so, the influence of fiqh siyasah in the formation of law in Turkey remains, although not explicitly.¹⁶ For example, in 1926, Turkey launched the Family Law that abolished unilateral divorce and *juzu'* (temporary marriage), and adopted a civil marriage system that regulated it under state law, not Islamic fiqh. However, as in other countries, the application of fiqh siyasah in Turkey has also caused controversy. Some consider that the application of fiqh siyasah is loose and inconsistent, which can lead to different interpretations in its application.

4. Iran

Iran's constitution is based on Islamic political thought and sharia law. The government in Iran is an Islamic republic and is headed by a supreme leader (Wali Faqih). The Iranian constitution guarantees human rights and freedom of speech, but with limits set by Islam.

Constitutions in Fiqh Siyasah play an important role in Islamic state building. In many countries, constitutions are built on the principles of Islamic law and influenced by local political and cultural views. However, on the other hand, there are also many criticisms obtained from the public about the application of fiqh siyasah.

CONCLUSION

Fiqh Siyasah is the study of the relationship between government and society in Islam. The constitution is the main guide in shaping government policies and decisions. In the context of fiqh siyasah, the constitution must reflect Islamic principles and provide support for laws or policies based on Islamic teachings. Some of the constitutional principles that must be considered in implementing fiqh siyasah are justice, human rights, democracy and the rule of law. The formation of the constitution cannot be seen as inseparable from the history, culture and politics of the country concerned. Therefore, the material in the constitution must be in accordance with the aspirations and spirit of the people in the country. Jurists also have the authority to understand and explain some matters when the constitution is applied.

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¹⁶ Nadirsyah, *Muslim Legal Thought and Governance: Fiqh Siyasah and Islamic Statehood*.

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