



## Comparison of the Value of Welfare Principles in National Law and Islamic Law

Paris Manalu<sup>1</sup>, Sugianto<sup>2</sup>, Andi Lala<sup>3</sup>

<sup>1-3</sup> IAIN Syekh Nurjati, West Java, Indonesia, manaluparis97@gmail.com

**Abstract.** The welfare state stresses that everyone has the right to social services, not only means of managing welfare or social services. The polarization of the welfare state's primary aims is articulated, with the goal of establishing indications as a measuring instrument in determining whether the society is affluent or not. Talking about the concept of the rule of law, Islam as a perfect religion also has the concept of statehood. The approach method in this study is normative legal research. The type of research used in this study is descriptive research. The data sources obtained from the author are Primary legal material data sources and Secondary legal materials. The data collection method carried out in this study is a literature study. The data analysis method used in this study is qualitative method. The current status of social welfare shows that there are residents who have not received adequate public support for their fundamental necessities. As a result, there are still residents who face challenges in carrying out social tasks, preventing them from living a decent and dignified existence. Islam is not just a religion that contains a set of ritual doctrines, but it is a holistic worldview that is comprehensive and systematic. Islam as al-din covers all aspects of human life including aspects of statehood and law.

**Keywords:** Law, Welfare, Value Principles

---

### INTRODUCTION

Indonesia is a state of law, as stated in article 1 verse (3) of the 1945 Constitution: "The State of Indonesia is a state of law." This is based on the 1945 Constitution's argument that the Indonesian state is founded on law (*rechtstaat*) rather than power alone (*machstaat*). The state's operations must not be founded just on power, but on the rule of law (Kansil, 1986) In Indonesia, the government regulates the people in accordance with the State Administration Law (Basah, 1992).

There are relationships of interaction in society that are positive and some are negative. Positive interactions cause positive things also for the surrounding community, while negative interactions cause damage that affects society as well. So, in this case the need for a state in regulating human life is very urgent. The function of the state to regulate human life is in the form of a regulation or law, both written and unwritten, in addition to functioning as a regulator, this law is also a tool to coerce, to limit the behavior of its people and can

provide sanctions against violators. This constitution must also be flexible with the times (Harjono, 2009).

The importance of law in state life in order to manage and regulate all community life. Without the law man would be messy, directionless, evil in the world would be rampant. So, the importance of law in this case is very urgent, both in the life of society, state and religion. In this case, Islam views the state is not only related to world interests, the purpose of forming the state in forming laws aims to maintain religion, soul, reason, offspring and preserve property (Rusli, 2017).

Since the Shari'a does not provide standard rules about the political system and government, Muslims must try to exclude the legal values contained in the Shari'a so that the most likely formulation can be found to translate these values into the life of the nation and state. When it comes to discussing states, there is no one agreed-upon definition of a state. However, in general it may be used as a guide—as is commonly known in international law, that a state usually has three main elements, namely (1) The existence of a people (2). The existence of territory (3). The existence of a sovereign government. The understanding of the state is not only on the covenant of society (social contract), but also on the basis of man as the caliph of God who carries His power and trust. In order to accomplish the wellbeing of the world and the end, man must live in line with His precepts. Thus, it may be taken in general that people should always pay more attention to and deliver out *amar ma'ruf* and *nahi munkar*, which means that humans must do good and avoid harm (Azahary, 2004).

Talking about the concept of the rule of law, Islam as a perfect religion also has the concept of statehood. On the conceptual plain, in line with the development of scholarship among Muslims, the thinking regarding the state system also developed. This thought, in the scientific conception is formulated as political Islam, *al-Siyasah al-Syar'iyah*, or referred to in al-Mawardi's theory with *al-Ahkam al-Sulthaniyyah*. This conception seeks to reflect efforts to find an intellectual foundation for the function and role of the state or government as an instrumental factor in meeting the interests and welfare of society, both outwardly and mentally (Rojak, 1999).

## **LITERATURE**

The state is an organization that regulates controls in a civilization in a territory based on a legal system structured by a government that is granted coercive authority for that purpose. The state has two tasks. First, to control and regulate the phenomena of asocial

power, that is, those that are contrary to each other, so as not to become dangerous antagonisms. Second, to organize and integrate human activities and groups towards achieving the goals of society as a whole. Horold J. Laski a political expert stated that the function and purpose of the state is development of conditions in which state members can achieve maximal fulfilment of their desires (Budiarjo, 2004).

In the historical context of practice, there are a number of types of legal states, namely, the police state, liberal law state, formal legal state, material law state (Huda, 2005). In carrying out its functions, the state uses law as its guideline. From a political moral standpoint, it will have a number of ethical considerations, including demands for legal clarity, requests for equitable treatment, democratic mandate, and demands for rationality (Suseno, 1999).

The purpose of the Indonesian state was established is to safeguard the whole Indonesian country and all Indonesian bloodshed, as well as to encourage general welfare, educate the nation's life, and contribute in the implementation of a world order based on autonomy, permanent peace, and social justice based on: There is only one God, humanism that is both just and polite, Indonesian solidarity, and peoplehood guided by wisdom in dialogue and representation, as well as the realization of social justice for all Indonesians (Srikandi, 2006).

The concept of a modern Islamic state according to Rashid Rida is that shari'ah is the highest source of law. In Rashid Ridho's view, shari'ah must require the help of power for the purpose of implementing it, and it is impossible to implement Islamic law in the absence of an Islamic State. As a result, the execution of Islamic law is the sole significant criterion for differentiating here between Islamic state and non-Islamic state (Enginner, 2000).

The Islamic State has the objectives of maintaining the safety and integrity of the state, maintaining the implementation of law and order and building the state. In Islam the state has the role of maintaining religion, taking care of the people, maintaining security and safety, and maintaining the harmony of other religions. The state also plays a role in realizing the creed and values of Islamic teachings. As well as carrying out the role of the caliphate, which embodies welfare and security (Fazlurrahman, 1988).

Spicker created the Welfare State theory, which described the welfare state as a social welfare system that provides the state (government) a greater responsibility in allocating a portion of public monies to assure the fulfillment of its citizens' fundamental needs. The welfare state is aimed at providing social services to the entire population. In a concept of a

state based on law, the law must be seen functionally, so that in the end the law is understood or understood as a collection of values of state and community life. Indonesia has chosen welfare state as a form of state (Nasir, 2023).

## **METHOD**

This research approach is normative legal research (Yadnya and Wibawa 2020). Soerjono Soekanto defines normative legal research as a literature examination (Soekanto 2009) that will obtain information related to the values and principles of welfare for the wider community in a country both in national law and Islamic law. The type of research used in this study is descriptive research to describe clearly, about various things related to the object studied, namely describing the urgency of the principles and values of the welfare of the rule of law so as to give birth to the values of justice both in national law and Islamic law in Indonesia. The data sources obtained from the author are Primary legal material data sources and Secondary legal materials. The data for this study was gathered through a literature review. The qualitative data analysis approach was applied in this investigation.

## **DISCUSSION**

The state is an organization that organizes control in a society in a territory based on a legal system structured by a government that is granted coercive authority for that purpose. According to Meriam Budiaharjo, the state has two tasks. First, to control and regulate the phenomena of asocial power, that is, those that are contrary to each other, so as not to become dangerous antagonisms. Second, organizing and integrating human activities and groups towards achieving the goals of the whole community (Budiarjo, 2004).

Therefore, the state has a coercive, monopoly and all-encompassing, all-embracing nature. The so-called state must certainly have a number of elements that must exist in the state that includes territory, population, and government. Every country's ultimate objective is to make its citizens happy. For Horold J. Laski a political expert states that the function and purpose of the state is: development of conditions in which state members can achieve maximal fulfilment of their desires (Budiarjo, 2004).

As for the historical context of the practice of states so far, there are a number of types of legal states, namely, the police state (polizei state), liberal law state, formal law state, material law state (Huda, 2005). Franz Magnis Suseno sees the state to run using law as a guideline seen from a political moral point of view because it will have a number of ethical

arguments, namely, for legal certainty, demands for equal treatment, democratic legitimacy, and demands for reason (Suseno, 1999).

The Preamble to the 1945 Constitution states that the purpose of the Indonesian state is "to protect the entire Indonesian nation and all Indonesian bloodshed, and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, lasting peace, and social justice" based on: Almighty Godhead, just and civilized mankind, Indonesian unity, and citizenship guided by knowledge via representative dialogue and the realization of social justice for all Indonesians (Srikandi, 2006).

A prominent Islamic scholar, formulating the concept of a modern Islamic state, Rashid Rida, stated that the main premise of the concept of an Islamic state is shari'ah, according to him shari'ah is the highest source of law. In Rashid Ridho's view, shari'ah must require the help of power for the purpose of implementing it, and it is impossible to implement Islamic law in the absence of an Islamic State. Therefore, it can be said that the application of Islamic law is the only major criterion that is decisive for distinguishing between an Islamic state and a non-Islamic state (Enginner, 2000).

In the relationship between religion and state, religion occupies an important position as truth that must be realized in reality and become the foundation of the development of a country. Religion has four roles in a state; Religion as a unifying factor, religion as a driver of the success of political processes and power, religion as the legitimacy of the political system, and religion as a source of morality.

Maududi conceptualized two goals of the state in Islam. First, to establish justice in human life and stop tyranny and destroy arbitrariness. Second, enforce the system with regard to establishing prayers and issuing zakat through all the resources and means available to the government. A system that forms the most important corner of Islamic life, for the state to spread goodness and virtue and command the accrued, as the main goal of Islam's coming to the world. In addition, for the state to cut the roots of evil, prevent evil which is something most hated by God (Supriadi, 2015).

While Fazlur Rahman considered the Islamic state is a state established or inhabited by Muslims in order to fulfill their desire to carry out Allah's commands through His revelation. On how to implement the administration of the country, Fazlur Rahman did not format rigidly, but the most important element that must be possessed is shura' as the basis. With the existence of the Shura institution, of course, ijtihad is needed from all competent

parties. Thus, said Fazlur Rahman, it will be very possible between one Islamic country and another Islamic country, the implementation of Islamic shari'ah will be different because it depends on the results of the *ijtihad* of the *mujtahids* in the country concerned (Hasbi, 2000).

The Islamic State has the objectives of maintaining the safety and integrity of the state, maintaining the implementation of law and order and building the state. In Islam the state has the role of maintaining religion, taking care of the people, maintaining security and safety, and maintaining the harmony of other religions. The state also plays a role in realizing the creed and values of Islamic teachings. As well as carrying out the role of the caliphate, which embodies welfare and security. In contrast to secularism which ignores religion and separates the state from religious rules. The state will interfere in religious affairs, if there are things that can harm the state (Fazlurrahman, 1988).

Other figures such as Muhammad Imarah also affirmed that Islam is both a religion and a system of government. Furthermore, it explains that in the secular (Western) stream, there is a separation between religion and state. While Islam, views the relationship between creed, sharia, religion, and government (*dawlah*). Islam is not a spiritual treatise per se. Government in Islam is very different from the understanding in Western thought (Supriadi, 2015).

Social welfare development is a manifestation of efforts to achieve the nation's goals mandated in the Constitution of the Republic of Indonesia Year 1945. The fifth Pancasila precept is social justice for all Indonesians, as well as the Preamble to the 1945 Constitution of the Republic of Indonesia regulations the state to protect the entire Indonesian state and all Indonesian bloodshed, promote welfare, educate the nation's life, and participate in implementing world order based on independence, peace in the region, and social justice (Undang-Undang Nomor 11 Tahun 2009).

Spicker proposed the welfare state theory, which described a welfare state as a welfare system that provides the state a greater responsibility in allocating a portion of public monies to assure the fulfillment of its residents' fundamental needs. The welfare state is aimed at providing social services to the entire population, as best and wherever possible. In a concept of a state based on law, the law must be seen functionally, so that in the end the law is understood or understood as a collection of values of state and social life. These good values are then used as input material in the framework of constitutional implementation, in this case related to making a policy in the field of law (Asep Warlan Yusup, 2008) Indonesia has chosen welfare-state as a form of state (Nasir, 2023).

The substance of the concept of the welfare state, the state is obliged to provide welfare to its people, by providing services, facilities, and infrastructure for the community. All basic needs of the community such as education and health services become the duties and responsibilities of the state, and the reflection or symbol of a country with independent status is the Government in this case represented by the President (Hamidi, 2009)<sup>19</sup>. Thus, the Government in accordance with the country's constitution has the authority and function to realize general welfare, as referred to in the Preamble of the NRI Constitution of 1945.

The government will certainly be consistent and strive to provide respect, protection, and fulfillment of rights to the basic needs of its citizens. These efforts must be carried out by the Government as a top priority by grounding the universal values of Pancasila, such as social equality, and justice, which are the spirit of welfare development. The government must stand on a welfare state approach that prioritizes social empowerment and protection (Putra, 2021).

Before explaining how M. Tahir Azhary thought about the general principles of the rule of law in Islam. First, it needs to be stated that the principles of the rule of law in Islam used in this description are the term "Islamic Nomocracy" used by M. Tahir Azhary in his writings that discuss the concept of the state of law from an Islamic point of view, one of which is the principle of welfare (Azhary, 2003).

The word "principle" in the Great Dictionary Indonesian be defined as "basis" or "principle" (the truth on which to think, act and so on).<sup>22</sup> By this we mean the principles or principles of fundamental truth, the instructions of moral regulations contained in a teaching that serve as the basis for thinking, acting, and behaving humans in managing a country (Noble, 2001).

According to M. Tahir Azhary, the welfare concept in Islamic nomocracy seeks to achieve social and economic fairness for all members of society or the people. The duty is assigned to the state and society's organizers. In Islamic nomocracy, social justice encompasses not only the fulfillment of material or material demands, but also the fulfillment of all people's spiritual needs. The state is obligated to address these two types of requirements and to give social security to those who are weaker or less capable. The Qur'an has provided a variety of sources of finances for social protection for members of the community based on the concepts of social justice and economic fairness. These sources of finances include zakat, infak, sadaqah, grants, and waqf, without accounting for state earnings from other sources such as taxes, penalties, and so on (Azhary, 2003).

In Islamic nomocracy social justice and economic justice are intended to prevent hoarding, property in the hands of a person or group of people or groups of people while other members of the community experience poverty. One of Islam's missions is to fight poverty, at least eliminating the gap of the underprivileged (Azhary, 2003).

To realize this principle of welfare which in the Qur'an is formulated with the words "baldatun thaybatun warabun ghafur" which is a prosperous country brought by the pleasure of Allah. The State is obliged to organize and allocate funds in sufficient quantities for social security purposes for those in need. Unemployment payments, parental benefits (for persons of retirement age), and scholarships for those who claim money are all part of social security. The state is also required to provide worship, education, orphanages, hospitals, and other services. (Azhary, 2003).

Under Islamic nomocracy, there is only one motivation to accept the concept of welfare: the Islamic concept of "hablun min Allah wa hablun min al-nas," or the element of worship and mua'malah. In other words, the welfare concept's application is only aimed at attaining social justice in society in accordance with Allah SWT's directives (Azhary, 2003).

Unlike western countries, the implementation of social welfare has a dual motivation, for example, social security for company workers. In terms of benefits, it is driven by the interests of the company's establishment because it wants to protect its capital. The visit is intended as an incentive for workers to increase their productivity. In other words, the visit has a positive effect on the company. In terms of workers' interests, one would judge that the visit contains humanitarian motivations. But the first motivation seems very dominant, because in reality, the economic system of capitalists always prioritizes the interests of their capital, even if social security must be given a calculation of corporate profits and losses it is impossible to ignore (Azhary, 2003).

## **CONCLUSION**

Today's evolving social welfare reveals that there are citizens who have not effectively fulfilled the state's entitlement to their fundamental necessities. As a result, there are still residents who face challenges in carrying out social tasks, preventing them from living a decent and dignified existence. Therefore, there has evolved an awareness of the most important value in the legal world is to grasp the notion of legal position in achieving an ideal legal system in Indonesia so that the framework of the welfare state may be achieved.

The state also plays a role in realizing the creed and values in Islamic teachings. This includes carrying out the role of the caliphate, which embodies prosperity and security. Islam is not just a religion that contains a set of ritual doctrines, but it is a holistic worldview that is comprehensive and systematic. Islam, as al-din, encompasses all areas of human existence, including sovereignty and law. One of the concepts of Islamic-based rule of law is the principle of wellbeing, which has values and is absolute, everlasting, and universal in its validity. The principle of welfare in the Islamic legal State is relevant to the Indonesian constitution. Because of the main principles contained in Islamic nomocracy such as deliberation, justice, free judiciary, protection of human rights, obedience.

## **BIBLIOGRAPHY**

- Azhary, M. T. 2003. *Negara Hukum*. Jakarta: Prenada Media Group
- Azhary, M. T. 2004. *Negara Hukum Suatu Studi tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Priode Madinah dan Masa Kini*, Jakarta: Kencana
- Budiardjo, M. 2003. *Dasar-dasar ilmu politik*. Jakarta: Gramedia Pustaka Utama.
- Engineer, Asghar Ali. 2000. *Devolusi Negara Islam*. Yogyakarta: Pustaka Pelajar.
- Fazlurrahman. 1988. *Cita-cita Islam*. Bandung: Pustaka Pelajar
- Hamidi, Jazim. 2009. *Teori dan Politik Hukum Tata Negara*. Yogyakarta: Total Media.
- Harjono. 2009. *Legitimasi Perubahan Konstitusi Kajian Terhadap UUD 1945*. Yogyakarta: Pustaka Pelajar.
- Hasbi, Amiruddin M. 2000. *Konsep Negara Islam Menurut Fazlurrahman*. Yogyakarta: UII Press.
- Huda, Ni'matul. 2005. *Negara Hukum, Demokrasi dan Judicial Review*. Yogyakarta: UII Press.
- Kansil, C. S. T. 1986. *Hukum Tata Negara Republik Indonesia*. Jakarta: Bina Aksara.
- Mulia, Musdah . 2001. *Negara Islam: Pemikiran Politik Husain Haikal*. Jakarta: Paramadina.
- Nasir, M., Khoiriyah, E., Pamungkas, B. P., Hardianti, I., & Zildjianda, R. 2023. "Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia". *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 5(1), 241-254.

- Putra, M. D. 2021. "Negara Kesejahteraan (Welfare State) Dalam Perspektif Pancasila". *LIKHITAPRAJNA Jurnal Ilmiah*, 23(2), 139-151.
- Rojak, J. A., & Zakki, M. 1999. *Politik Kenegaraan: Pemikiran-Pemikiran Al-Ghazali dan Ibnu Taimiyah*. Surabaya: Bina Ilmu.
- Rusli, Muhammad. 2017. *Ushul Fiqih I*. Lampung: Fakultas Syariah IAIN Raden Intan
- Srikandi, Tim. 2006. UUD 1945 dan Amandemennya, UUD 1945 Amandemen ke 1-4, UUD 1945 Sebelum Amandemen dan Penjelasannya, Butir-butir Pancasila Piagam Jakarta dan Kabinet Indonesia Bersatu. Jakarta.
- Supriadi, C. 2015. "Relasi Islam dan Negara: Wacana Keislaman dan Keindonesiaan". *Kalimah: Jurnal Studi Agama dan Pemikiran Islam*, 13(2), 199-221.
- Suseno, Franz Magnis. 1999. *Etika Politik Prinsip-Prinsip Moral Dasar Kenegaraan Modern*. Jakarta: Gramedia Pustaka Utama.