

IMPLEMENTATION OF ISLAMIC LAW ON THREE COUNTRIES (STUDY OF COMPARISON ON INDONESIA, MALAYSIA, AND BRUNAI DARUSALAM)

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Abstract.

The application of Islamic law to a heterogeneous country is very difficult, especially if the country has a law or a law which is considered able to cover all religious believers in the country, in this case the comparative approach of law is used as a method of research and science His age is relatively young, because it only grew rapidly in the late XIX century or early XX century. Comparison is one of the most important sources of knowledge. Comparison can be said as a technique, discipline, implementation and method in which the values of human life, relationships and activities are known and evaluated. but in terms of Islamic law it is not only referred to as a theory, but is a principle that must be enforced. Conceptually there are principles of Islamic law which include the arrangement and application of Islamic law for Muslims. Indonesia, Malaysia and Brunei Darussalam are countries that are known as the majority of the Muslim population and as a country that is known for the contribution of thought and application of Islamic Law to its system of government. only, because it is equally known that Indonesia, Malaysia, Brunei Darussalam are former colonies from the Netherlands and the United Kingdom. and the process of entry and development of Islamic teachings is through trade, and the most important of these three countries adheres to the government system and several regions still rooted in the royal system, Indonesia, which was formerly under Dutch colonization which is still trying to reduce Islamic law until a number of laws were formed which played a role in Islamic law, Malaysia which with the royal system and the ministry was in the grip of the British. the adoption of several Islamic laws contained in the authority of the religious council for the 8 legal systems contained in the rules of Islamic law, while the State of Brunei Darussalam which has implemented Islamic Law through 47 articles in the rules of the state and there are 29 articles containing elements of Islam.

Keywords: Application of Islamic Law, Three Countries.

1.INTRODUCTION.

Legal experts in Indonesia learn about the theories of the application of Islamic law through the legal system that once prevailed in Indonesia. The legal politicization carried out by the Dutch colonialists towards reducing Islamic law and keeping it away from its people has caused Islamic law to remain marginalized in the process. positive law in the perspective of Indonesian law. The teaching of the rule of law states that for every person who believes in carrying out his Shari'a faithfully. Some of the principles stated in the Qur'an about the arrangement and application of Islamic law, take the choice of other laws if Allah and His messengers have established a definite and clear law through the Qur'an and Hadith.

In the Indonesian legal system, there are various sources of national law derived from customary law, Islamic law and western law. The three sources of law are always competing to become national law so that various legal theories apply. In carrying out the Islamic Shari'a is a command of Allah, and ignoring them is categorized as infidels, wrongdoers, or wicked.

2. CONCEPT OF LAW APPLICATION.

The universality of the Qur'anic law requires an explanation in the form of a practical implementation of law. This is done by the Prophet through daily life, in the form of an applicable normative law, namely Sunnah. Describing how the struggle of the Muslim Indonesian people wants to impose Islamic law according to the commands of Allah and His messengers.

The teaching about the rule of law states that for every person who believes in carrying out his shari'a in a manner several principles are stated in the Qur'an about the arrangement and application of Islamic law. Muslims are not justified in taking other legal choices when Allah and His apostles have established a definite and clear law.

When choosing a law other than Islamic law, it is considered wrong, disbelieved, and wicked. Therefore, in terms of Islamic law, the rule of law should apply, the obedience of Muslims to the government in carrying out its law is part of the theory of legal structuring or the

3. METHOD FOR THE APPLICATION OF ISLAMIC LAW IN MALAYSIA.

Efforts to implement Islamic law in addition to the field of worship and kinship (marriage, divorce, inheritance) is currently a cultural phenomenon of people whose backgrounds can be seen from various aspects. Among them is that Islamic law has become a law that lives in Muslim societies in Malaysia, because Islamic law develops along with the entry of Islam in Malaysia is a Federal empire consisting of thirteen states.

In addition to the legal codification, there is also a short legal rule book, one of which is the Kanun Legal Minutes or the Malacca Short Law book that contains the rules of Islamic Civil and Criminal Law. During the British colonial phase, the position of Islamic law as the basis of the state changed.

1. Some factors inhibiting the development of Islam in Malaysia are:

1. The existence of religious pluralism.
2. The existence of colonialism.
3. The influence of secularization and modernization Islamic law that applies in Malaysia is Islamic law mixed with customary law. In other words, Abdul Monir bin Yaacob, who wrote a lot about legislation in Malaysia, the laws that apply in Malay countries before British interference is the custom of Pepateh for mostly Malays in the land of Nine and some areas in Malacca, and the custom of temenggung in other parts of the Peninsula.

As a living law that is inherent in the lives of Muslims, Islamic law has become a part of people's lives, so that Islamic law is no longer perceived as legal norms imposed from outside of each of its adherents to provide a basis for the constitution and the authority of the Islamic Religious Council, Ministry of Religion, and the Sharia Court. Islamic law in Malaysia can be grouped into two, there are those related to civil matters and there are those that concern criminal matters.

Officers in the Islamic Religious Assembly In the civil field include:

1. Engagement, divorce, divorce or divorce.
2. Giving property or claims against property due to the case above.
3. Livelihoods of people under dependents, legitimate children, child care and care.

4. Provision of endowments.
5. Other cases that have been granted power under the law.

Officers in the Islamic Religious Assembly In the criminal field:

1. Persecution of wives and disobedience to husbands.
2. Having abnormal sex.
3. Abuse of liquor.
4. Mistakes against adopted children.
5. Other mistakes that have been further regulated in the law.

Administration of Islamic Law.

1. Kelantan Court Administration Law, 1982.
2. Law on the Syari'ah Kedah Court, 1983
3. Federal Territory Law on Islamic Law Administration, 1985.
4. Family Law
5. Kelantan Islamic Family Law, 1983
6. Negeri Sembilan Islamic Family Law, 1983
7. Malacca Islamic Family Law, 1983.
8. Selangor Islamic Family Law, 1984
9. Perak Islamic Family Law, 1984.
10. Kedah Islamic Family Law, 1984
11. Federal Territory Islamic Family Law, 1984
12. Penang Islamic Family Law, 1985
13. Trengganu Islamic Family Law, 1985.

Criminal Procedure.

1. Kelantan Islamic Criminal Procedure Act, 1983.
2. Federal Territory Islamic Criminal Procedure Law.

Civil Procedure.

1. Kelantan Islamic Civil Procedure Law Act 1984
2. Law on the Islamic Civil Procedure Procedure of Kedah, 1984.

Proof.

1. The Federal Territory Shari'a Court Verification Law.

Baitul Mal.

1. Act of the Federal Territory Baitul Mal.

Although some problems have been regulated in Islamic law in Malaysia, British law is still applied to most legislation and judicial prudence.

Brunei has a dual legal system. The first is a system inherited from the UK, similar to those found in India, Malaysia and

Singapore. This is based on the British Common Law, but with the codification of an important part of it. The Common Law legal system that covers most of the laws in Brunei.

The Common Law Courts structure in Brunei begins with the judiciary. There are currently less than 10 Magistrates for the country, all of whom are local residents. A rung above is a judge of the Intermediate Court. This was established to be a training ground for local people. At present there are 2 Intermediate Court judges, both local residents. The High Court currently consists of 3 judges, 2 of whom are local residents.

The Chairperson of the Supreme Court is a judge from the Hong Kong High Court. There is no jury system in Brunei and a Judge or Judge sits alone to hear death penalty cases except for cases where 2 (two) High Court Judges will sit. The High Court consists of 3 judges, all of whom are currently retired from English Judges. This means that the legal content should be able to capture the aspirations of the people who grow and develop, not only in the present, but also as a reference in anticipating social, economic and political developments in the future.

4. Results of the Application of Islamic Law in Brunei Darussalam

Islamic law in Brunei Darussalam underwent a change after the treaties with Britain which caused the British to intervene in the affairs of the judiciary, justice, law and legislation. The implementation of Islamic law was specifically left to the Brunei government, which was then followed by the formation of a Shariah court. The State of Brunei Darussalam accommodates Islamic, customary and western law, but what is often used is Muslim (Islamic) law.

The acquisition of Islamic law in Brunei as a whole was developed from the Shafi'i school and was largely regulatory. It is estimated that Islam began to be introduced in Brunei Darussalam in 1977 through the path of Eastern Southeast Asia by traders from China. Islam became the official religion of the country since King Awang Alak Betatar converted to Islam and changed its name to Muhammad Shah (1406-1408) several matters concerning governance:

1. drafting religious government institutions.
2. compile the customs used in all ceremonies.
3. strengthen Islamic law.

Brunei also develops foreign relations by entering the Organization of Islamic Conference, ASEAN and the United Nations. Before the arrival of Britain, the Act implemented in Brunei is the Islamic Law which has been based on the laws of the Brunei qanun. The laws have been amended, starting in 1957, 1960, 1961 and 1967. When Revision Laws of Brunei occurred in 1984, this law also underwent a revision but only a few in addition to its name exchanged with the deed of the Religious Assembly and the Court of 77. Before the arrival of the UK, the Act implemented in Brunei was an Islamic Law which had been based on the Brunei qanun law. The Brunei Qanun law was written during the reign of Sultan Hassan (1605-1619 AD) which was perfected by Jalilul Jabbar (1619-1652 AD).

Because the customary law and the position of the shara law were deemed not very clear, the Sultanate of Brunei gave a petition to the British *Jaya Messenger* on July 2, 1906 which demanded: Every case related to Islam was tried by local judges. Request that local customs and laws not be overhauled, moved, and violated forever.

- 1) For the next time the Brunei Sharia Court is only justified in carrying out Islamic laws which are binding on marriages, divorce, and *ibdat* (special) cases only. While issues related to *jinayat* are submitted to British law based on England's Common Law. Regulations and legislation in Brunei are continually overhauled, as in 1912 the State Council of the People's Legislative Assembly enacted the Islamic religious law known as "Muhammadans Marriages and Divorce Enactment. "Until the last, namely the promulgation of January 1, 1956. After that it was amended, starting in 1957, 1960, 1961 and 1967. When Revision Laws of Brunei occurred in 1984, the law also underwent a revision but only a few in addition to the name being exchanged with the deed of the Religious Council and the Court of the Republic of Indonesia 77
- 2) The Sultan, as Head of State who was sovereign and fully in power, made Islam an official religion, Malay as the official language, and a special

position of the Malay people. In the institutionalization of Brunei 1959, there were articles which were the main principles of Brunei's State identity, namely.

- 3) Chapter 3 article 1 states: "The official religion for the State is the Islamic religion according to the Ahlus Sunnah wal-jama'ah, but others can be practiced safely and perfectly by those who practice it".
- 4) Chapter 4 chapter 1 states: "the highest power of government for the land is in the hands of the Sultan".
- 5) Chapter 4 Article 5 mentions: "then no one may be appointed as Minister or Deputy Minister or Setiausaha but that person is a Malay who has an Islamic religion following the Shafi'i School of Ahlus Sunnah wal Jama'ah".
- 6) Chapter 82 Article 1 states: "The official language of the State is Malay and it should be written in a letter determined by law that says"
- 7) Chapter 82 Article 2 states: "Chairman of Ugama is Sultan"

5. CONCLUSION.

In the preamble of the Brunei Law, it is stated that the contents of this law are customs that are upheld and passed down from generation to generation. This law was made with the aim of being a guide and example for the sultans, viziers, cafeteria, and the minister in running the government for the benefit of the people. In addition, this law also regulates penalties for people who have violated the rules of the Brunei Darussalam Sultanate. Brunei's Kanun Law clearly reflects that Islamic Law is enforced in the territory of the Sultanate of Brunei Darussalam, and even becomes the principle and basis of government.

Law Islam combined with elements of Malay customary law has always been passed on to every Sultan who ruled Brunei Darussalam since the reign of Sultan Muhammad Hasan. The Sultan has made efforts to improve the government, among other things by forming the Islamic Religious Council on the basis of the Religious Law and the original Court in 1955. The Assembly is in charge of advising the Sultan on the issue of Islam. This step taken by the Sultan was to make Islam truly function as a life view of the

people of Brunei and the only state ideology. For this reason, a position was formed on the matter of Religion whose task was to disseminate Islam, both to the government and its apparatus and to the wider community. For the purposes of Islamic research, on September 16 1985 a Da'wah center was established, which was also tasked with carrying out da'wah programs and education for religious officials.

The concept of the state philosophy of MIB is an expression that Brunei does not shift from the old tradition of a sultanate. If the sultanate institutions in other archipelago regions except Malaysia for certain regions ended since the arrival of Western colonialism, Brunei before independence was determined to maintain the sultanate system. The State of MIB philosophy for Brunei is a final concept, which continues to be socialized through educational institutions and the general public.

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