

Formulation of Public Policy Based on Islamic Legal Studies as a Solution in the Contemporary Era

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Abstract

In the contemporary era, the formulation of public policy faces multifaceted challenges, ranging from socioeconomic inequalities to cultural diversity and environmental sustainability. This paper explores the potential of Islamic legal studies as a framework for devising public policies that address these challenges while aligning with Islamic principles and values. By integrating insights from Islamic jurisprudence, ethics, and governance, this study elucidates how Islamic legal principles can inform the formulation and implementation of public policies that promote justice, equity, and welfare for all segments of society. Through a comprehensive review of relevant literature and case studies, this research examines the role of Islamic legal studies in shaping public policy across various domains, including economics, social welfare, environmental conservation, and governance. It analyzes the compatibility of Islamic legal principles with contemporary policy issues, highlighting areas of convergence and divergence with conventional policy approaches. Furthermore, this paper investigates the mechanisms for incorporating



Islamic legal perspectives into the policymaking process, considering the roles of policymakers, scholars, civil society actors, and international institutions. The findings of this study contribute to the discourse on the role of Islamic legal studies in contemporary governance and policy development, offering insights into how Islamic principles can enrich and complement existing policy frameworks. By emphasizing principles of justice, compassion, and stewardship, policies informed by Islamic legal studies have the potential to address pressing societal challenges in a holistic and inclusive manner.

KEYWORDS *Public Policy, Islamic Law, Contemporary*

Introduction

Public policy is a legal order that is structured to solve public problems that develop in society. The formation of public policy comes from Pancasila and the 1945 Constitution, as well as based on the customs of Indonesian society and religion which is a source of moral and ethical formation of the nation. The religious approach, one of which is Islam. Islam is believed to be a perfect religion, because it does not only regulate ritual issues (vertical) but regulates all aspects of life, both individual relations with individuals, individual relations with society, individual relations with the State. The approach of Islamic law in the formation of public policy leads to an understanding that Islamic teachings accept new interpretations, in order to respond to social changes that occur.¹

This public policy aims to prosper the people, in Surah QS. Saad/38: 27 explains that *"We did not create the heavens and the earth and what is between them in vain. That is the assumption of those who disbelieve. So, woe to those who disbelieve because (they will enter) hell"*.² The conclusion of Q.S

¹ Mohammad Daud Ali, *Hukum Islam; Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Raja Grafindo Persada, 2014).

² Tim Penyempurnaan Terjemahan Al-Qur'an, *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019).

Shad verse 27 is that Allah SWT tells about the perfection of His wisdom in creating the heavens and the earth, and that He did not create them in vain (without wisdom, benefit and benefit).³ It can be interpreted that the policies formed and practiced in the community must aim for the benefit of the people, not for one's personal interests.

The study of Islamic law has existed in the archipelago since the time of the kingdom before the formation of the Unitary State of the Republic of Indonesia, at that time Islamic law was applied as a policy that was only applied to several kingdoms with Islamic backgrounds as a tool to form an ethical-moral population inhabiting the territory of the kingdom. Before the development of the concept of Progressive Law pioneered by Satjipto Raharjo, Islamic Law had gone through a long and comprehensive dynamization process.⁴ Ijtihad is the main road traveled by scholars in responding to the dynamics of society that undergoes change and development. Ijtihad is carried out not only to enforce Islamic law in the text (nash), but also as an effort to provide solutions to legal problems that are not found in the nash.

The Compilation of Islamic Law is one of the products of ijtihad as an effort to codify and unify the law and then develop into applied law in the Religious Courts. Not a few parties criticize the existence of the Compilation of Islamic Law both in terms of status, as well as formal and material content. Codification and unification will always clash with the reality of a dynamic society. So it is necessary to conduct an ongoing study of the validity of the Compilation of Islamic Law which empirically is often unable to answer the heterogeneity of Indonesian society.⁵

The purpose of public policy is to realize order, tranquility, welfare in society, and protect the rights of the community.⁶ In essence, public

³ Dwi Purwoko, "Kebijakan Pemerintah, Media, Dan Fatwa Mui Dalam Mendinamisasi Perkembangan Bank Syariah Di Indonesia," *Jurnal Wahana Bina Pemerintahan* 2 (2023): 57–66.

⁴ Sadjipto Rahardjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2006).

⁵ A. Rahmat Rosyadi, *Formalisasi Syariat Islam Dalam Perspektif Tata Hukum Indonesia* (Bogor: Ghalia Indonesia, 2006).

⁶ Tim Penyusun PKMK-LAN, *Pengembangan Pola Partisipasi Masyarakat Dalam Proses Kebijakan Publik* (Jakarta: Pusat Kajian Manajemen Kebijakan Lembaga Administrasi Negara, 2012).

policy is for the benefit of society. In other words, an understanding of policy-making procedures is very important for policy actors. Currently, public policy products in Indonesia still have a concerning face, which is characterized by, among others, overlapping policies, unclear urgency of the existence of public policies, improper procedures in making public policies, and the lack of academic papers as the basis for policy making. These problems will become more prominent if we relate them to authority. Ideally, public policies are made and implemented at all levels of government, so the responsibilities of policy makers will be different at each level according to their authority.

Basically, a decision taken to deal with a situation or problem in a public policy formulation process must consider many things. In order not to become a problem, formulating public policy must go through essential stage.⁷ With the majority of the Islamic population, consideration and strengthening of Islamic legal studies are needed in the formation of public policy. Therefore, policies should be based on the wishes, hopes, demands, and needs of the community to be very important to the policy-making process for the realization of fast, precise and adequate public policy.

The shortcomings or mistakes of public policy will be known after the public policy is implemented, the success of implementing public policy can be seen from the impact caused as a result of evaluating the implementation of a policy. The behavior of administrative institutions tasked with carrying out the program is only one aspect of policy implementation. Other factors include community involvement, political, economic, and social forces with various parties.⁸

The implementation of policies that are targeted and efficient will be able to solve a problem correctly; however, the more complex the policy issue and the more thorough the analysis employed, the more theory and resources are required to explain the accuracy of the policy implementation.⁹ Analysis of policies is necessary, especially in light of

⁷ J Iskandar, *Kapita Selekta Teori Administrasi Negara* (Bandung: Puspaga, 2012).

⁸ Darmawan Erik, "Peluang Peran Serta Para Ahli Hukum Islam Di Indonesia Dalam Perumusan Kebijakan Publik," *Jurnal Studi Sosial Dan Politik* 2, no. 2 (2018): 72–84.

⁹ Muhammad Ali Ramdhani and Abdullah Ramdhani, "Konsep Umum Pelaksanaan Kebijakan Publik," *Jurnal Publik* 11, no. 1 (2017): 1–12.

their effects. Making sure a policy does not go against and harm the interests of the community is the goal of the study of policy implementation. Through this paper, it will be explained what are the considerations in formulating a public policy and whether the study of Islamic law is a solution to problems in formulating public policy.

This research is studied using the normative juridical¹⁰ method by examining the provisions of Islamic Law and the Qur'an in analyzing the formulation of public policy. Furthermore, this research is studied with a statute approach (legislation) and historical approach, by analyzing regulations related to issues in the contemporary era related to the formulation of public policy. Then the study of public policy based on Islamic legal studies uses literature data from books, laws, journals, and other literature related to public policy formulation.

Considerations in Formulating Public Policy

Making a public policy is an important step for the government to take. However, in its formulation, it must consider many factors so that the objectives of making the policy can be achieved. The formulation of a government policy is essentially a political process that is very complex and analytical, which does not recognize when it starts and ends and the limits of the process are uncertain.¹¹ A series of complex thoughts that we ultimately understand by the process of formulating government policy which then the result of the formulation becomes a policy.

In the policy-making process, the government must be accountable for the results of the policies it makes. Therefore, during the process of formulating a policy, the government must think about various aspects and must also involve experts in their fields so that the output of the formulation results can have clear objectives.¹² One of them is the role of MUI in dealing with the COVID-19 pandemic; in this case, it is required

¹⁰ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif*, 1st ed (Depok: Rajawali, 2019).

¹¹ Y. Awan Abdoelah and Yudi Rusfina, *Teori & Analisis Kebijakan Publik* (Bandung: Alfabeta, 2016).

¹² Said Zainal Abidin, *Kebijakan Publik*, ed. Dedy A (Jakarta: Salemba Humanika, 2016).

to make a fatwa related to Islamic law in the condition of COVID-19. In this context, the Indonesian Ulema Council (MUI) is a Non-Governmental Organization that accommodates ulama, Zuma, and Islamic scholars in Indonesia to guide, foster, and protect Muslims throughout Indonesia.¹³ There are several fatwas issued by the Indonesian Ulema Council (MUI) during the COVID-19 pandemic that have been published and become a reference for Indonesian Muslims as guidelines for carrying out worship during the pandemic.

MUI's fatwa is not a state law that has sovereignty that can be imposed on all people. MUI fatwa also has no sanction and does not have to be obeyed by all citizens. The Indonesian Ulema Council is explained in *siyasah dusturiyah* as an assistant to the government in solving a problem in Islam, in this case, the role and function of MUI are the same as the iftar institution.¹⁴ MUI Fatwa No. 14 of 2020 concerning the implementation of worship in the situation of the Covid-19 outbreak, MUI Fatwa No.14 of 2021 concerning the Law of using the Covid-19 vaccine produced by AstraZeneca, and MUI Fatwa No. 23 of 2021 concerning the Law of Swab Test for Covid-19 Detection while fasting.¹⁵

In the Qur'an it is explained that:

"O you who believe, obey Allah and obey the Messenger (His), and ulil amri among you. then if you differ in opinion about something, then return it to Allah (the Qur'an) and the Messenger (his sunnah), if you truly believe in Allah and the next day. that is better (for you) and better consequences ". (An Nisa: 59).

In the verse mentioned that we as citizens of a country must obey the leader, it is mentioned in the Qur'an after our obedience to Allah and His

¹³ Jannatin Nisa, Marni, and Lisnawati, "Fatwa Majelis Ulama Indonesia (MUI) Pada Masa Pandemi Covid-19 Dalam Perspektif Ketatanegaraan," *Jurnal Syarah* 11, no. 1 (2022): 37–53.

¹⁴ Anonim, "Fatwa Ulama Mainkan Peran Penting Tetapkan Hukum Terkait Pandemi Covid-19," Kementerian Sekretariat Negara, 2020, https://setneg.go.id/baca/index/fatwa_ulama_mainkan_peran_penting_tetapkan_hukum_terkait_pandemi_covid_19.

¹⁵ Fisher Zulkarnain et al., "Kebijakan Fatwa MUI Meliburkan Shalat Jumat Pada Masa Darurat Covid-19," *Digital Library UIN Sunan Gunung Djati*, 2020, <https://digilib.uinsgd.ac.id/30733/>.

Messenger. But in this case our obedience to the government is not necessarily doing what the government orders, obey government policy if what becomes a policy does not violate and violate Islamic law.

Today there are many new problems that arise along with the times, therefore the government as a party that has the obligation and authority to deal with a problem that arises in society must make a policy in order to deal with the problem. However, in formulating a policy, the government has a consideration so that the policy can be accepted by the wider community. Policy making in dealing with contemporary problems in Indonesia such as economic growth and industrialization, environmental problems, poverty problems, weak law problems, disintegration problems and other problems that arise in the current era.¹⁶

Every public policy begins with the formulation of identified issues, and policy implementation is aimed at addressing the issues that arise in society. The term "public policy" is often used daily in academic contexts such as political science, social science, economics, and law school.¹⁷ The phrase, however, can also be used to refer to something more specific, such as government deregulation and debureaucratization policies.

Since every public policy contains a set of values, when the government makes a policy, it also implements these values into society. In this situation, public policies should reflect society's goals, moral principles, and norms,¹⁸ This implies that societal values and norms should not conflict with public policies. When a public policy contains values that conflict with societal norms, it will face opposition when put into practice. An issue deserves more public resources than other issues if it has developed into a public problem and is prioritized on the public agenda.

¹⁶ Tata Sukayat, "Internalisasi Nilai Islam Melalui Kebijakan Publik (Studi Terhadap Dakwah Struktural Program Bandung Agamis)," *Jurnal Dakwah* 16, no. 1 (2015): 79–102.

¹⁷ Nuryanti Mustari, *Pemahaman Kebijakan Publik (Formulasi, Implementasi, Dan Evaluasi Kebijakan Publik)* (Yogyakarta: Leutikaprio, 2015).

¹⁸ Mustari.

As the main step so that policy making can be implemented according to plan, the government must consider several problem factors related to policy formulation, including:¹⁹

1. Community participation

In order to realize a social order in the process of forming a public policy, it must involve community participation in the process in order to create a strengthening of citizens (civil society). The participation of the community in the formulation of a policy will make the community no longer in a situation where they have to feel constrained and burdened by the existence of a policy, but the social order that occurs is due to the need for a policy without any coercion from other parties.²⁰ In community participation in formulating a policy, there are two ways how the community can participate in formulating a policy, namely through direct participation and indirect participation.

Direct participation can be interpreted as community participation carried out directly without intermediaries by utilizing public spaces such as conference halls, parliament buildings, and so on.²¹ This participation takes place, for example, at hearings between the community and the DPR as policy makers so that there is an agreement between the community and the government. Then the second is indirect community participation, this participation process is carried out by utilizing technological advances, for example through mass media, social media, television, radio, newspapers and so on. The participation process no longer takes place through direct discussions in the room but has become wider and easier, the expansion of public space to participate in a policy shows the existence of democracy.

"So it is by the mercy of Allah that you are gentle with them. If you had been harsh and harsh-hearted, they would have distanced themselves from you."

¹⁹ Abdoelah and Rusfina, *Teori Dan Analisis Kebijakan Publik* (Jakarta: Prenadamedia Group, 2019).

²⁰ Junaidi Abdillah, "Gagasan Reaktualisasi Teori Pidana Islam Dan Relevansinya Bagi Pembangunan Hukum Di Indonesia," *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 10, no. 1 (2017): 63–95.

²¹ Tiyas Ayu Yulinda, "Tinjauan Hukum Islam Terhadap Partisipasi Politik Masyarakat Desa Pampang Tangguk Jaya" (Universitas Islam Negeri Raden Intan Lampung, 2017).

*So forgive them, ask forgiveness for them, and consult with them in their affairs. Then when you have made up your minds, then put your trust in Allah. Verily, Allah loves those who put their trust in Him". (Q.S. Al-Imran: 159).*²²

In the above verse explains about how to deliberate, it is explained that the leaders of a country or others are obliged to deliberate with the people in resolving a matter and include the community in all policy making.

2. Social, cultural and religious factors

Making a policy must pay attention to the differences that exist in Indonesian society which has a variety of different ethnicities, cultures and religions.²³ The policy-making process in Indonesia has many challenges related to the plurality of Indonesian society. There are several policies issued by the government that are based on Islamic perspectives, for example the Aceh Special Region Province which is given special rights to run its local government in accordance with Islamic law with Pancasila as its legal basis.

From an Islamic point of view, the meaning of this problem is found in the letter QS. Al-Hujurat Verse 13 which means:

*"O man! Indeed, We have created you from a man and a woman, then We made you nations and tribes so that you know each other. Indeed, the noblest among you in the sight of Allah is the most pious. Indeed, Allah is the All-Knowing, the Exhaustive (Q.S. Al-Hujurat: 13).*²⁴

The above verse means that we were created as humans by Allah SWT. With different circumstances, but in the value of humanity we are actually the same. The differences that we find today are intended so that among us know each other and can provide benefits among fellow creatures of Allah swt.

²² Tim Penyempurnaan Terjemahan Al-Qur'an, *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019).

²³ Laode Monto Bauto, "Perspektif Agama Dan Kebudayaan Dalam Kehidupan Masyarakat Indonesia (Suatu Tinjauan Sosiologi Agama)," *Jurnal Pendidikan Ilmu Sosial* 23, no. 2 (2014): 11–15.

²⁴ Tim Penyempurnaan Terjemahan Al-Qur'an, *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019*.

3. Political factors

As a public policy maker, the government cannot walk alone by formulating and ratifying it, but as the party in charge of formulating and making a government policy there must also be support from other government agencies. It is intended that the policies made can take place optimally because there are other parties who are tasked with supervising and implementing tasks.²⁵

*"O Daud, We have made you a caliph (ruler) on earth, so judge between people fairly and do not follow your lusts, for they will lead you astray from the path of Allah. Indeed, those who go astray from the path of Allah will receive a severe punishment, because they forget the day of reckoning" (QS. Shad: 26).*²⁶

The above verse explains about leaders who must be fair in carrying out their duties as head of government. As a good leader, fair, obedient and obedient to the commands of Allah and stay away from what is prohibited.

4. Defense and security factors

Defense and security is something that is the basis of human life in a government. In making a government policy, defense and security is one of the most prioritized aspects, because this concerns the interests of all citizens.²⁷

*"And prepare against them whatever strength there is of horses tethered for battle (with which preparation) you thrill the enemies of Allah, your enemies and those besides them whom you do not know, while Allah knows them" (Q.S al-Anfal: 60).*²⁸

The meaning of the verse above is to explain the importance of preparing everything and mobilizing all the potentials and advantages possessed by a country such as human resources, natural resources, food

²⁵ Sahya Anggara, *Kebijakan Publik* (Bandung: Pustaka Setia, 2018).

²⁶ Tim Penyempurnaan Terjemahan Al-Qur'an, *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019*.

²⁷ Purwo Santoso, Hasrul Hanif, and Rachmad Gustomy, *Menembus Ortodoksi: Kajian Kebijakan Publik* (Yogyakarta: FISIPOL UGM, 2004).

²⁸ Tim Penyempurnaan Terjemahan Al-Qur'an, *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019*.

security, and other resilience in order to realize national defense and security.

Development of Islamic Law in Indonesia

In the early years of the New Order, the position of Islamic law as one of the sources of national law was not as firm, but efforts to emphasize it continued. This was demonstrated by K.H. Mohammad Dahlan, a religious leader from the NU, who attempted to introduce a Muslim marriage bill and received enthusiastic support from the Islamic factions in the DPR-GR.²⁹ This attempt was then continued, though it was unsuccessful, by putting forth a draft formal law governing judicial institutions in Indonesia in 1970.

The result of this work was Law No. 14/1970, which established the Religious Courts as one of the judicial branches below the Supreme Court. Hazairin claimed that this law made Islamic law directly enforceable as a separate law. The adoption of Law No. 14 of 1989 on Religious Courts confirmed the legitimacy of the application of Islamic law. Following this, significant efforts were made to compile Islamic law in specific areas, resulting in the publication of three books: Marriage Law, Inheritance Law, and Waqf Law.

MPR Decree No. III/MPR/2000 on the Source of Law and the Order of Legislation further opened up opportunities for the birth of laws based on Islamic law. In the reform era several legislations were born that could strengthen Islamic law, including Hajj Management Law, Zakat Management Law, Waqf Law, Aceh Privileges Implementation Law, Sharia Banking Law, National Sharia Securities.³⁰

Public policy is a collection of fundamental guidelines and directives created to control the operations and makeup of governmental institutions, including the framework for friendly interactions between the

²⁹ Rohidin, *Pengantar Hukum Islam Dari Semenanjung Arabia Hingga Indonesia* (Yogyakarta: Lintang Rasi Aksara Books, 2016).

³⁰ Mardani, *Hukum Islam: Pengantar Ilmu Hukum Islam Di Indonesia* (Yogyakarta: Puspaga, 2015).

state and society in the context of the life of the country and state.³¹ Public policy is crucial because it serves as a check on the government's ability to run the nation and protect the rights of all citizens and residents. Therefore, in nations that place a strong emphasis on constitutional democracy, the fundamental law serves a special purpose in limiting governmental power in a way that prevents arbitrary use of it. As a result, it is anticipated that citizen rights will be better protected.

Muslims are becoming more religious, and as a result, more people are becoming aware of their responsibilities and obligations to practice Islam, which is thought to be an expression of God's mercy and compassion for the cosmos. Based on their Islamic beliefs, Muslims cannot remove or separate Islamic law from their daily lives because it is a fundamental component of Islamic teachings.³² Therefore, if Islamic law becomes the cornerstone and order of Muslims' lives and is fully supported by the state by being confirmed in law, Muslims will experience inner peace in their religious life. This is the Republic of Indonesia, with Pancasila as the basic philosophy of the state and the 1945 Constitution as its constitutional basis, not only possible, but even a juridical constitutional imperative.

The development of the inclusion of elements of Islamic law in legislation in the context of national legal development is always open, in line with juridical constitutional imperatives. The problem is how to make the provisions of the study of Islamic law can be understood, realized and felt as an alternative that brings grace to the entire Indonesian nation, which in fact the majority adheres to Islam, which by its religious teachings is obliged to submit to Islamic law.³³

³¹ Sobirin Malian and Muhammad Uhaid As'ad, *Kebijakan Publik Dalam Negara Hukum* (Yogyakarta: Kreasi Total Media, 2021).

³² Muhaimin Muhaimin and Abd Wahab, "Santri, Misi Politik Dan Perumusan Kebijakan Publik Di Kabupaten Jember," *Jurnal Pemikiran Hukum Dan Hukum Islam* 10, no. 2 (2019): 1576–182.

³³ Ahmad Muhtadi Anshor and Muhammad Ngizzul Muttaqin, "Implementasi Pemikiran Fiqih Prioritas Yusuf Al-Qardhawi Sebagai Upaya Membangun Kebijakan Berbasis Kemanusiaan," *Al-Maslahah* 16, no. 1 (2020): 64–85.

During the industrial revolution, technology and law play an important role in it.³⁴ The rapid advancement of technology in this era should not be addressed as an ordinary technological development, but as a wave of industrial revolution. Today's technological achievements have changed the way people live, from thinking, communicating, working, mobility, to social order. This includes the prevailing legal order. All activities involving this technology will have an impact on laws and policies that will guide technological advancement as a support for growth. A long-term development strategy must be considered when attempting to align legislative outputs, the judiciary, and even government policies and regulations with the technological revolution.

The era of the industrial revolution 4.0 is characterized by patterns of digital economy, artificial intelligence, big data, robotics, and so on, known as the phenomenon of disruptive innovation. This will also have an impact on the legal field as a natural signpost that always accompanies social order. Globalization has far entered a new phase with increasingly sophisticated technological advances. There is no other way for us to immediately harmonize technological advances with the right regulations to frame them. Various technology-based ideas, products or services are given limited trial space along with thinking about how to make regulations. The government must be able to encourage faster regulation-making procedures in order to catch up with technological developments.

The ability of a nation to adapt to the fourth industrial revolution depends heavily on its ability to create regulations that can control innovations made by skilled resources. Reconstructing the higher education curriculum that is responsive to the industrial revolution also requires redesigning the curriculum with a human digital approach and digital-based expertise as well as the relevance of the laws that govern it.

³⁴ Akhmad Rudi Muswanto, "Reaktualisasi Dan Kontekstualisasi Pemahaman Hukum Islam Di Era Industri 4.0," *CENDEKIA: Jurnal Studi Keislaman* 5, no. 2 (2019): 173–98.

Reactualization of Islamic Law Studies in Formulating Public Policy

The contemporary era has added a series of legal problems that are very difficult to solve, even though it has been attempted with historical approaches and innovations in *ijtihad* methods. With the existence of legal problems and social realities, it certainly requires special attention, so that the resulting Islamic legal solutions are truly on target and achieve the objectives of the establishment of Islamic law, namely the creation of benefits for humanity as a whole.

Furthermore, the lack of progress in public services in Indonesia makes public policy an increasingly strategic issue.³⁵ It has far-reaching impacts on the country's economy, politics, social structure, and other aspects of people's lives. Given the current state of public policy, the goal of good organization must be achieved through the implementation of good governance.

Good governance is a process that determines the government on the equitable distribution of authority to all parts of society to influence decisions and policies relating to public life to develop their political, economic, social, and cultural institutions in the government system.³⁶ So that all segments of society can effectively influence decisions and policies relating to public life to develop their political, economic, social, and cultural institutions in a system of governance with good governance.³⁷

The existence of Islamic law that existed about 14 centuries ago comes from the Qur'an and hadith as well as the results of human thought.³⁸ Islamic law is the result of understanding extracted from detailed texts through a series of reasoning processes from long intellectual

³⁵ Ismayanti, "Implementasi Prinsip-Prinsip Good Governance Dalam Meningkatkan Kualitas Pelayanan Publik Di Kantor Kecamatan Masalle Kabupaten Enrekang" (2021), Universitas Muhamadiyah Makasar.

³⁶ Boy Hasibuan Rahman, "Impelentasi Prinsip-Prinsip Good Governance Dalam Pelayanan Publik (Studi Pada Kantor Kecamatan Sorkam Kabupaten Tapanuli Tengah)," *Administrasi Publik* 26, no. 4 (2019): 1–115.

³⁷ Moh Anwar Nuris, *Implementasi Prinsip-Prinsip Good Governance Dalam Memajukan Kabupaten Jember* (Institut Agama Islam Negeri Jember, 2020).

³⁸ M. Din Syamsuddin, *Etika Agama Dalam Membangun Masyarakat Madani*, ed, Abd. R (Jakarta: Logos, 2002).

work before finally being declared as practical law. As a product of *ijtihad*, it is time for Islamic law to continue to develop with consideration of socio-political and socio-cultural interests.³⁹

The term Islamic law is a translation of Islamic law in Western literature.⁴⁰ This term has become popular. Talking about *sharia* in the sense of Islamic law, there is a separation of the field of law as a legal discipline. In fact, Islamic law does not distinguish strictly between the areas of private and public law, as is understood in Western legal science. This is because in Islamic private law there are aspects of public law; and vice versa. The scope of Islamic law in the sense of Islamic *fiqh* includes: worship and *muamalah*. Worship includes the relationship between man and his Lord. While *muamalat* in a very broad sense is related to the relationship between man and his fellow man. The purpose of Islamic law is to realize the prosperity of the world hereafter. Rejecting harm and misfortune and realizing absolute justice. All Islamic laws, both the laws stated in the text and the results of *ijtihad*, are based on this lofty goal.

This historical fact demonstrates how fluid the development of Islamic law has been. This is a result of the harmony between Islamic law's adaptability and the originality of Muslims who are regarded as having the right to issue *ijtihad*.⁴¹ The variety of interpretations of Islamic law that reflect societal shifts and the ever-changing circumstances of the time serve as an example of these two things.

One effort to respond to the problems of today's society that are very actual and must be resolved immediately is the problem of policies that prioritize ethical values and human values.⁴² In an effort to save human civilization, the concept of policy development needs to be supported by sciences that do not only talk about laws and regulations, but need to be supported by social, cultural and ethical sciences to balance the science of law and policy.

³⁹ Bisri M Djaenali, *Islam Rahmatan Lil Alamin Cet. 1* (Yogyakarta: Warta Pustaka, 2005).

⁴⁰ Mardani, *Hukum Islam: Pengantar Ilmu Hukum Islam Di Indonesia*.

⁴¹ Zakiyuddin Baidhaw, *Pendidikan Agama Berwawasan Multikultural*, ed., Sayed (Jakarta: Erlangga, 2005).

⁴² Agus Suarman Sudarsa, "Kebijakan Publik Dalam Perspektif Islam," Djuanda University, 2022.

Along with the development of policies, especially in Indonesia as described above, of course political developments and interventions are very influential, as well as the influence of community dynamics and the times. In the past, the study of policies in Islamic law was studied in the theme of *fiqh siyasah*, which was more dominant in discussing leadership issues. Imam al-Mawardi, a central figure in the study of *fiqh siyasah*, for example, said that the source of the ruler's power is starting from the agreement between the ruler and his people, which then produces reciprocal rights and obligations. Therefore, the policy initiated by the ruler should be sustainable to the interests of the people.⁴³

In contrast to al-Ghozali who argues that the source of the ruler's power is God, then the power is delegated only to a small number of His servants. With al-Ghozali's opinion, if so far the laws and provisions of God have always been in favor and created benefits for mankind, then the ruler as a person who is given the mandate to carry out this task, ideally all policies must be based on the social side, humanity.⁴⁴

In this modern era, policy problems are increasingly developing, starting from the beginning of policy formulation, policy implementation, to the impact of policies. Responding to the policy problems described above, Islamic law scholars have tried to respond to come up with a solution, including by classifying several cases that are similar and have similar motives by induction, then creating responsive *ijtihad* innovations.

However, in establishing Islamic law, it should not be haphazard but must fulfill certain conditions. Islamic law that is built is an embodiment of the word of God in order to facilitate understanding His commands to answer various problems. Developments and changes in society always demand certainty or specific legal answers in accordance with the current state of society where Islamic law is established.

⁴³ Anshor and Mutaqqin, "Implementasi Pemikiran Fiqih Prioritas Yusuf Al-Qardhawi Sebagai Upaya Membangun Kebijakan Berbasis Kemanusiaan," *Al-Maslahah* 16, no. 1 (2020): 64–85, <https://doi.org/10.24260/al-maslahah.v16i1.1543>.

⁴⁴ Erik Darmawan, "Peluang Peran Serta Para Ahli Hukum Islam Di Indonesia Dalam Perumusan Kebijakan Publik," *Jurnal Studi Sosial Dan Politik* 2, no. 2 (2018): 72–84.

On the other hand, there are numerous issues that Indonesian positive law has not addressed due to various changes and developments in human civilization in the current era of globalization. Therefore, reactualizing Islamic teachings is one of the solutions to these issues. In order to find fresh solutions that are more responsive and contextual, modern reformers of Islamic law must have the courage to let go of these historical and cultural burdens.

Conclusion

Policy can be interpreted as a series of program plans, attitudes, actions, decisions, activities, to do something or not do something carried out by state officials as policy makers as a stage to solve a problem being faced. The determination of a policy is an important step in solving a problem and achieving a goal that has been planned previously. However, the formulation must consider many factors so that the objectives of making the policy can be achieved.

It is possible to interpret this to mean that community policies must be developed and implemented with the interests of the people, not individual members, in mind. In formulating a policy, the party authorized to make needs to pay attention to various aspects related to the interests of many parties so that in the future the policy does not backfire on the government. The development and changes in society always demand certainty or specific legal answers in accordance with the current state of society where Islamic law is established. On the other hand, despite numerous advancements and changes in human civilization during the current globalization era, Indonesian positive law has not yet addressed many of these issues. Therefore, reactualizing Islamic teachings is one of the solutions to these various issues. The development of the inclusion of Islamic legal studies in public policy in the context of national legal development is always open, in line with juridical constitutional imperatives.

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