

Legislative Dynamics of Religious Courts and Compilation of Islamic Law in Indonesia Analysis of Busthanul Arifin's Thoughts

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Abstract

The Religious Courts Law and the Compilation of Islamic Law serve as guidelines for resolving cases in the Religious Courts. The drafting of religious justice laws and the drafting of Islamic law in Indonesia involved several important stages and key figures. One of the important figures in the preparation and formulation of laws regarding religious justice and the preparation of Islamic law is Busthanul Arifin. This research aims to explain Busthanul Arifin's ideas and thoughts which color the formulation of religious laws and the preparation of Islamic law in Indonesia. This research uses a qualitative method with a content analysis approach. The research findings explain that Busthanul Arifin's thoughts greatly influenced the formation of religious justice laws and the drafting of Islamic law. There are three important thoughts of Busthanul Arifin, namely first; institutionalization of Islamic law can avoid differences in the application of Islamic law. Second, the institutionalization of Islamic law can be carried out by increasing the authority and function of religious courts. Third, the institutionalization of Islamic law is to uphold justice and strengthen the Indonesian state based on Pancasila, not to create an Islamic state. Knowing and understanding Busthanul Arifin's thoughts on Islamic law legislation in Indonesia through the judiciary will provide an understanding that unity in the application of Islamic law is a solution to avoid legal dualism and strengthen the upholding of justice and is by Pancasila.

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INTRODUCTION

The idea of compiling a compilation of Islamic law is an attempt to find a pattern of application of fiqh that is unique to Indonesia or contextual fiqh (Edy, 2022; Hikmatullah, 2017; A. S. Salim, 2022). The drafting process went hand in hand with the emergence of reform ideas in Indonesian Islamic legal thought. The compilation of Islamic law was prepared to fill substantial legal gaps which are used as a reference in resolving cases submitted to the Religious Courts (Arisman et al., 2024; Daharis et al., 2023; Hazanah et al., 2023).

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By compiling Islamic law, pluralism in religious court decisions can be minimized because the reference points for religious court judges are the same. The compilation of Islamic law transforms fiqh into positive law that applies and binds all Indonesian Muslims. More than that, the compilation of Islamic law is more easily accepted by the Indonesian Muslim community because it is extracted from the traditions of the Indonesian people (Arifin, 2017; Hazanah et al., 2023; Hikmatullah, 2017; Jamil, 2018; Marpaung, 2023).

History records the success of the formulation efforts of the Compilation of Islamic law overshadowed by competition between several Islamic jurists. The many offer to absorb customary law and the *Burgerlijk Wetboek* (BW) into the material of the Compilation of Islamic law are considered to be incompatible with the practice of the Indonesian community of the *Syafi'iyah* sect (Azhar, 2016; Hakim, 2017).

One of the Islamic law reform figures in Indonesia who promotes basic ideas or values about legal institutionalization (legal structure) is Busthanul Arifin. He is a legal practitioner who is persistent in incorporating Islamic law into the national legal system, especially regarding the authority and power of religious courts in the national justice system. In his efforts, he also went through formal political processes, both through the Constitution, the People's Representative Council, and the Supreme Court. Thanks to his ideas and struggle, the Religious Courts moved from quasi-judicial status to become District Courts which have the same status as other State courts. This was proven by the passing of the Religious Courts Law in 1989 and the passing of the Compilation of Islamic Law in 1991 (Ahmad, 1996).

Research regarding Busthanul Arifin's thoughts on coloring Islamic law reform in Indonesia has been conducted by several previous authors. Previous research has written about the impact of Busthanul Arifin's thoughts on Islamic law reform and the role of Islamic law and its development in the national legal system in Indonesia (Islamiyati, 2018; Suharto, 2016). Meanwhile, this research aims to explain Bustanul Arifin's ideas and thoughts which color the formulation of the Religious Courts Law and the compilation of Islamic law in Indonesia.

METHODS

This research uses qualitative methods with a content analysis approach (Bengtsson, 2016; Kuckartz, 2019; Saldaña, 2020). This research analyzes the content of the text regarding the concepts of thought and ideas put forward by Busthanul Arifin in connection with the renewal of Islamic law in Indonesia. All data comes from various sources taken from books, theories, and expert opinions, especially writings related to Busthanul Arifin's thoughts on coloring Islamic law reform in Indonesia (Suharto, 2016).

RESULT AND DISCUSSION

Marzuki Wahid, in his book "Indonesian Jurisprudence: A Compilation of Islamic Law and Counter Legal Draft-compilation of Islamic Law within the Framework of Indonesian Legal Politics", that the emergence of the idea of establishing a compilation of Islamic law started from among the political elite who hold political power, both executive and judicial (Wahid, 2022). Muslims in Indonesia have a passive and conservative attitude towards the development of the institutionalization of Islamic law. The idea of a political elite can be understood because the process of compiling Islamic law is top-down and uses a structural approach (Khotibul, 2016). The Joint Decree which is the legal basis for the work of compiling Islamic law is dominated by the Supreme Court (MA) and the Ministry of Religion. Of the 16 members of the project implementation team, only one representative of the Indonesian Ulema Council, K.H Ibrahim Hussein, LML. The number of members of the Supreme Court of the Republic of Indonesia increased by

eight people and the members of the Ministry of Religion of the Republic of Indonesia by seven people (Wahid, 2022).

One of the Supreme Court figures who was influential and made a big contribution in drafting the Compilation of Islamic Law and Religious Courts Law was Busthanul Arifin. He was appointed as the leader of the project "Development of Islamic Law through Fiqh" when he served as Chairman of the Supreme Court for the Environment and Religious Courts (through a joint decision of the Chairman of the Supreme Court and the Minister of Religion on 21 March 1985). As project leader, he dominated in determining the operational direction of the Islamic Law Compilation (Wahid, 2022). However, other opinions say that the concept of the Compilation of Islamic Law comes from KH. Ibrahim Husein conveyed to Bustanul Arifin (Rahamtullah, 2015).

Zafrullah Salim said that Bustanul Arifin was the first person to start compiling Islamic law by using the term compilation as legal politics. He did not want to use the name codification because the codification sentence took a long time and had to take the form of an official law with the approval of the House of Representatives. Meanwhile, the compilation is quite legal regarding the Presidential Instruction (Inpres) (Salim, 2019). This is due to the urgent need among the Religious Courts for the existence of a compilation of Islamic law. This idea was conveyed directly to President Soeharto and the President responded positively. President Soeharto as Head of State at that time had a very big role in smoothing the project of formulating a compilation of Islamic law. As proof, a Joint Decree has been issued between the Chairman of the Supreme Court of the Republic of Indonesia and the Minister of Religion of the Republic of Indonesia regarding the appointment to implement an Islamic law development project costing two hundred and thirty million rupiah, which directly appointed Busthanul Arifin as chairman of the project. All project costs do not come from the State budget but from President Soeharto's money (Ahmad, 1996).

Busthanul Arifin as project head and expert stated that the institutionalization of Islamic law is a necessity because, in essence, this is the actualization of Islamic law so that it is effective in the lives of Indonesian society (Suharto, 2016). However, efforts to institutionalize Islamic law in Indonesia have encountered several political obstacles. These political obstacles began during the Dutch colonial period. To perpetuate colonialism, the Dutch government implemented legal policies adapted to the needs of colonialism. The application uses the *Recepti* theory, namely that Islamic law is enforced only if it has been absorbed by customary law. Islamic law is not considered an independent law but must be linked to customary law (Ahmad, 1996; Ramadhan et al., 2020; Wardi et al., 2023; Zulkifli et al., 2024).

The institutionalization of Islamic law will be able to avoid differences in the application of Islamic law, especially in the Religious Courts. These differences occurred because of the many and varied schools of thought and styles of Islamic law that were referred to by judges in the Religious Courts at that time. The lack of clarity in society's views on sharia and fiqh exacerbates this reality. For hundreds of years, Muslims throughout the world, including in Indonesia, still have an unclear understanding of the meaning and scope of Islamic sharia. Sometimes sharia is called fiqh, and sometimes it is called *al-din*. This situation gives rise to uncertainty about what Islamic law is, confusion about how to apply Islamic law, and an inability to use the means and instruments established by the Constitution. According to him, Islamic law which is used as the basis for court decisions must be clear, and apply to everyone and there must be legal certainty (Herawati, 2011).

Busthanul Arifin said that the institutionalization of Islamic law could be carried out by increasing the authority and function of the Religious Courts. This is important for several reasons. First, because law is the rule of society. Second, every

member of society must obey the rules. Third, the implementation of the law cannot continue to be enforced if it is opposed by society. Fourth, law without power is just a fantasy. The law will only work if there is a shadow of power. Fifth, the court is the center of legal authority and the state must have an authorized and powerful court (Arifin, 1996).

In this context, Busthanul Arifin put forward the idea that to institutionalize Islamic law there must be rules that have binding force and a compilation of Islamic law is the solution. This idea is based on the following reasons. First, for Islamic law to be implemented in Indonesia, the law must be clear and applicable to society and law enforcement officials. Second, the non-uniform perception of sharia creates legal gaps. Third, in Islamic history, many countries have established Islamic law as their state legislation (Arifin, 1996).

Based on the thoughts above, before the working meeting of the Ministry of Religion, Busthanul proposed a framework for increasing the authority and power of the Religious Courts as follows. First, there is a need to increase the capacity and function of the Religious Courts by determining the composition of the Religious Courts and High Religious Courts based on Law or Government Regulation. Second, streamlining the Islamic chamber at the Supreme Court. Then third, form a state committee to research the application of Islamic law among society to be included in the authority of the Religious Courts.

Efforts to institutionalize Islamic law in Indonesia taken by figures through their thinking did not take an easy path. There are several obstacles and resistance, especially from a political perspective (Arifin, 1996; Roszi, 2017). These obstacles are divided into three patterns as shown in the following picture.

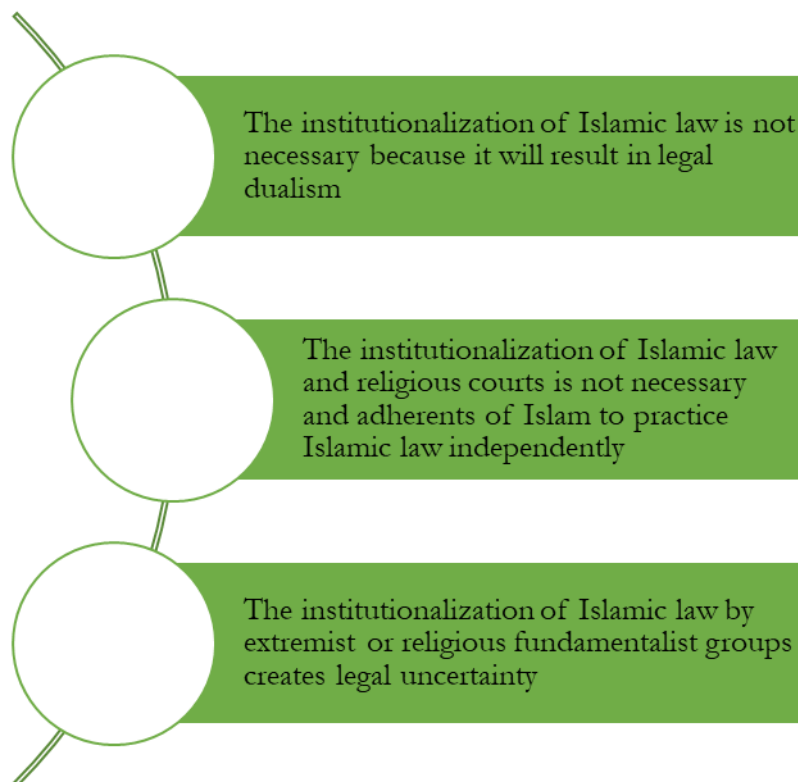


Fig 1. Obstacles and resistance to efforts to institutionalize Islamic law in Indonesia

First, there is no need to institutionalize Islamic law because it will create legal dualism. The formation of a judicial unit is important in the context of legal unification. However, this group still believes that the Religious Courts should exist but be based in the General Courts. This differentiates the court as a process from the court as an institution. This thinking has constitutional weaknesses because it

does not refer to the Constitution, especially Law Number 14 of 1970 which states that the four judicial spheres are under the Supreme Court. Therefore, there cannot be dualism. Moreover, this idea is not based on the fact that Religious Courts have existed for more than a hundred years.

Second, the institutionalization of Islamic law and religious courts is not necessary. This group asks Muslims to implement Islamic law independently. This idea is not only constitutionally flawed, it is also extremely dangerous. The application of Islamic law cannot be implemented independently by Muslims because its implementation requires government intervention, as is the case in countries that use Islamic law as their rule.

Third, the institutionalization of Islamic law carried out by extremist or religious fundamentalist groups creates legal uncertainty, as is the case in countries that adhere to religion. This opinion was expressed by Franz Magnis Suseno and Manager Leo Soekoto, which was supported by Suara Selamat Daily. This group believes that the existence of Religious Courts and Religious Courts is not necessary.

According to Ahmad Roestandi, the reason many people oppose the institutionalization of Islamic law is that these groups do not understand the purpose of this institutionalization. However, after being explained by Busthanul Arifin, he stated that the purpose of the law was to uphold justice and strengthen the Indonesian state based on Pancasila, not to create an Islamic state.

The thoughts of Busthanul Arifin and other figures in Indonesia regarding the institutionalization of Islamic law finally gave birth to the Draft Law on Religious Courts and the Compilation of Islamic Law. The draft law was then ratified as Law Number 7 of 1989 concerning Religious Courts which was amended by Law Number 3 of 2006 and Number 50 of 2009. This law contains new administrative provisions for religious judges and expands their absolute competence. . from the Religious Court. Religious Courts not only have the authority to adjudicate cases of marriage, inheritance, wills, grants, alms, and waqf for Muslim people but also sharia economic businesses (Arifin, 2017; Fitri et al., 2024; Ira, 2022; Nursalam et al., 2024).

The thoughts of these figures also resulted in the Compilation of Islamic Law which was designated as a source of material law used in resolving Islamic religious law problems in religious courts. The Compilation of Islamic Law consists of several books that regulate various aspects of Muslim life, such as worship, muamalah, family law, and criminal law. Compilation of Islamic Law can be used to resolve legal issues such as marriage, inheritance, guardianship, and divorce.

CONCLUSION

Busthanul Arifin's thoughts greatly influenced the institutionalization of Islamic law in Indonesia. This thinking is based on the desire to avoid differences in the application of Islamic law in the state. This idea was then brought into the project of developing Islamic law by increasing the authority and function of the Religious Courts. Even though this effort was challenged by many parties, Busthanul Arifin was able to lead this effort by explaining that the institutionalization of Islamic law was to uphold justice and strengthen the Indonesian state based on Pancasila, not to create an Islamic state. These efforts to institutionalize Islamic law bore fruit with the enactment of the law on religious justice and the Compilation of Islamic Law as guidelines and material law in religious justice.

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