



The Formalization of Islamic Sharia in Public Sphere: A Case Study of Hizbut Tahrir Indonesia

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Abstract

Following the stepped down of the New Order, the movements of establishing Islamic sharia in Indonesia has increased. Some of the organizations which promote Islamic sharia on their movements are *Majelis Mujahidin Indonesia (MMI)*, *Front Pembela Islam (FPI)*, and *Hizbut Tahrir Indonesia (HTI)*. This paper observes the movements of HTI by using the perspective of public reason, especially the theories of John Rawls and Abdullah An-Naim. The results show that HTI should use more democratic methods in delivering its notion. As Indonesia is a democratic nation, creating the appropriate form of discussion and conversation would be an effective way in introducing Islamic sharia to the public. Later, the decision of accepting or rejecting the idea is in the hands of the public.

Keywords:

Hizbut Tahrir Indonesia, Islamic sharia, and public reason

Introduction

After the stepped down of the New Order, the movements to formalize Islamic sharia into the state law become one of the trends in Indonesia. Many political parties¹ promote the “seven words” of the Jakarta Charter, namely the obligation to practice sharia, for their own adherents, to come into the constitution. Beside those political parties,

¹ Those political parties are PBB (*Partai Bulan Bintang*) and PPP (*Partai Persatuan Pembangunan*).

many social movements endeavor to promote Islamic sharia as the basis for the government of the Indonesia, like *Majelis Mujahidin Indonesia* (MMI), *Front Pembela Islam* (FPI), and *Hizbut Tabrir Indonesia* (HTI).

These movements show that in modern life, religion becomes publicly more popular than it differs from the prediction of most scholars. In fact, in 1980s, people globally was shocked by the emergence of many kinds of new religious movements emerged in several parts of the world. This situation is different from what proponents of renaissance and enlightenment predicted that religion would fade or, more or less, it would only take a role as a private domain. Unpredictably, religion can escape from modernity design. Thus, we can see, in my opinion, the renaissance movement of religion and spirituality in secular era.²

Previously, John Naisbitt and Patricia Aburdene in *Megatrends 2000* predicted that one of the popular movements in the 21st century would be the new spiritual movements. Such movements present to react and respond to modern cultures, such as consumerism, materialism, and hedonism that lead to underrate the spiritual element of humanity. Therefore, one of the noteworthy movements in the West is spiritual movement called “new age movement”. The new age movement, then, can be seen as a response to modern paradigm, a paradigm which is considered a failed effort in creating better life for human society. (Shafwan & Ruslani 2000, vi) Today, we see de-privatization religious movement as Peter L. Berger called de-secularization movement. It shows that modernization has brought revolutionary change in human life, either individually or socially. On the other hand, modernization also has caused gigantic destruction and devastating processes in human history. Therefore, today, many rejection

2 As Harvey Cox in *The Secular City* (1966) predicted that the gigantic wave of secularization would be seen with the emergence of civilized urban society. At the same time, this process would imply the collapse of the traditional religion. Unfortunately, Cox’s prediction didn’t happen. In *Religion in the Secular City* (1985), he revised his prediction by elaborating the fact of religious resurgence coloring secular public sphere.

movements against modernity and powerful movements of counter-secularization inevitably occur. One of these movements is inspired by the religious spirit (Berger 2003, 17; Khalkhali *et al.* 2017; Hammond 2017; Mohamad 2017).

One of the various movements in Indonesia that rejects modernity and globalization is Hizbut Tahrir Indonesia (HTI). According to Hizbut Tahrir, the decline of Muslim society is caused by the modernity and Western hegemony. Therefore, HTI offers Islamic sharia as the only solution. HTI sees that there are three main ideologies, which recently influence the world, they are: capitalism, socialism, and Islam. Based on this point of view, we can see that HTI treats Islam as an ideology. According to HTI, Islam is not merely a religion but it is also a system as it gives solutions to human problems. Islam doesn't only provide concept but it also serves method (*thariqah*). HTI asserts that Islam is a solution for human society because it provides what human needs (al-Nabhani n.d., 53-54; Gulmez 2017; Long 2017; Topal 2017).

This paper focuses on the case study of the movement of Hizbut Tahrir Indonesia which has merely completed the concept of Islamic sharia and responded to various issues in Indonesia like pornography bill, *fitna* film of Geert Wilder, Islamic sects such as Ahmadiyah, al-Qiyadah, etc. In order to support this notion, HTI publishes many books and bulletins which discuss several aspects of Islamic sharia, including the system of economy, government, international law, and destitution. Moreover, HTI has sent letters to a number of world leaders, like Megawati, George W. Bush, and Saddam Hussein in which it suggests the implementation of Islamic sharia (Ahnaf 2004, 695). Therefore, this paper uses the perspective of public reason, especially the theory of John Rawls and Abdullah An-Naim. Observing and responding the notion of formalization of Islamic sharia through public reason perspective does not only contribute to revise the content of this notion but also give space for citizen to publicly discuss it.

Islamic Caliphate and Islamic Sharia

According to HTI, the implementation of Islamic sharia in the Islamic caliphate is the only solution to run the world. HTI sees this world as a 'sick' society (*jahiliyah*), a term described by Sayyid Qutb. Thus, the only rule that can bring people, especially Muslims, to a better life is the rule of Islam. Through Islamic caliphate, in which Islamic rules can perform well, Islam can defeat Western power. Everything which is faced by Muslims today is caused by the absence of Islamic rule whereas Islam is a life foundation, a philosophical basis and a principle of all rules (al-Nabhani n.d., 53; Saada & Gross 2017). Therefore, HTI strongly recommends to build Islamic caliphate and to implement Islamic rule.

The application of the Islamic rule is the manifestation of faith, the logical consequence of the obligation to apply Islamic rule entirely, and the realization of the obligation to choose a leader (*bai'at*) (Ramadhan 2002, 12; Stopler 2017). Furthermore, HTI insists that the absence of Islamic law and Muslims' authority is "a matter that makes it obligatory upon Muslims to declare war against the ruler and an evidence indicating that implementing Islam is a condition for having Dar al-Islam, otherwise the ruler must be fought" (Ahnaf 2004b, 31). According to Ahnaf, HTI sees that there are two agitations regarding the condition of Indonesia: (1) the nation should be divided into separated countries, or (2) the nation will be governed by the infidels as the result of the destruction of the Islamic caliphate. Consequently, HTI sees that re-enforcing Islamic law to rule all aspects of life is the most important thing to save Muslims from these two horrible agitations (Ahnaf 2004b, 31). One of HTI's arguments is based on *al-Maidah* 49 "And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient."

Based on this verse, HTI believes that the application of Islamic law to the state would create a favorable system and good government in which corruption and all other problems of the state can be solved. In economics, the advantage of the Islamic system for HTI is that it can solve the problem of poverty, oppression, and economic injustice. Islamic law, HTI argues, is very concerned with the poor, and empowers the rich in the competition through laws of *zakat*, *infaq*, and *shadoqoh*.

Therefore, HTI rejects to participate in the secular political system. The reason is due to the normative argument of the Islamic law, such as *hudud*, *jinayah*, and *ta'zir*; that can be run only by a caliph, not by a secular leader like a president or a prime minister. Due to the obligation to implement the Islamic law, HTI believes that the only way to implement the Islamic law appropriately is by the establishment of Islamic caliphate. Iqbal Ahnaf states that:

“The party (HT) also does not accept to participate in the system of the government because HT is based on the system of *kufr*, and this is a matter forbidden for Muslims....The party instead strives to uproot and to remove their *kufr* system which they implement upon Muslims so that the *Abkam* (rules of Islam) to be brought back again, both in application and implementation (Ahnaf 2004b) (Hizbut Tahrir 1999).

According to Ahnaf, the term of “Islamic caliphate” is unique because HTI believes that there is no Islamic state in the world today. Saudi Arabia, Iran, Sudan, Pakistan, Yemen, Malaysia that are identified as Islamic state, are not Islamic state. “The political system of Islamic states or caliphates is neither kingdom (Saudi Arabia), republic (Iran), nor federation (Malaysia). Although they apply Islamic laws, they do not fulfill the most significant character of Islamic states, trans-nationalism”(Ahnaf 2004b, 38-39; Agensky 2017).

In order to establish the Islamic caliphate, HTI employs three steps. The first step is the promotion methods of HTI. In other words, it is

a cultivation program to gather people who believe in the idea and the method of the organization so that they form the party group. The second is the stage of interaction with the *Ummah* (the Muslim people) to let the *Ummah* embrace and carry Islam. The third is the stage of establishing government, implementing Islam generally and comprehensively, and carrying it as a message to the world (Caver and Ege n.d.), (Newel n.d.). Up to know, in my opinion, HTI is currently working on the first and second steps.

The ideas of HTI and other groups which promote Islamic law, in some levels, are acceptable. Some rules accommodating Islamic sharia are as follows: [1] Law No 1/1971 about Marriage, [2] Governmental Regulation No 28/1977 about *Perwakafan* (property donated for religious or community use) [3] Law No 7/1989 about Religion Judicature., [4] Law No 7/1992, Law No 10/1998 and Law No 23/1999 about National Banking System, which allowed the operation of Sariah Bank³, [5] Presidential Directive No 1/1991 about Islamic Law Compilation, [6] Law No 17/1999 about Implementation of Pilgrimage, and [7] Law No 38/1999 about *Zakat* Management.

Meanwhile, there are many regencies in Indonesia implementing the Regional Regulations (*Peraturan Daerah*) of Islamic Shariah: [1] in Bulukumba (South Sulawesi) there are some Islamic rules, including Regional Regulation No 03/2002 on prohibition, control and sale of alcoholic beverages, Regional Regulation No 2/2003 on management of *zakat*, *infuq* and *shadaqoh*, Regional Regulation No 05/2003 on dress codes for Muslim men and women, Regional Regulation No 06/2005 on the ability of reading-writing the *Qur'an* for student and bridegroom. In Gowa, the local government obligates woman civil servants to wear veil and adds the time of Islamic lesson in school. In Cianjur (West Java),

³ In Indonesia there are many Sharia Bank that differs from conventional bank. However, they are mostly under the control and management of conventional bank, like BNI, BCA, etc.

there is a Letter of Local Government No 061/2896 on recommendation of Islamic uniform (Fanani, 2006).⁴ In Padang, Mayor Instruction No 451.442/Binsos/III/2006 obligates the people to wear Islamic dress codes (Kamil and Chaider 2007, 110-111).

Nangroe Aceh Darussalam (NAD) has various rules of Islamic law; [1] *Qanun* (Law) No 11/2002 on the implementation of Islamic Sariah in the level of theology, prayer and Islamic mission, [2] *Qanun* No 12/2003 on Alcoholic Beverages and Types of Alcoholic Beverages, [3] *Qanun* No 13/2003 on *Maisir* (*Perjudian, gambling*), [4] *Qanun* No 14/2003 on *Khalwat*⁵ (the meeting of two person, man and woman, in the desolate place without family), *Qanun* No 7/2004 on the Management of *Zakat*. Base on Pagar's research, the citizens of Aceh enthusiastically agree with the implementation of Islamic Sariah, including the non-Muslim. When the observer ask "How if Islamic law is implemented only for Muslim?", 65% respondents disagree. In other words, 65% of the citizens agree with the implementation of Islamic Sharia for non-Muslims (Pagar 2006). Furthermore, Pagar concludes that the law of Islamic sharia in Aceh does not give implication for the dualism (double) of criminal law (*pidana*) in Aceh between the Islamic sharia and the national law. It is because Islamic law just regulates some, not all, aspects. Therefore, for something which

4 Ahmad Fuad Fanani's research on the implementation of Islamic Sharia in West Java, according to the leader of *pesantren*. Usually, this institution is operated by the traditionalist Muslim [chiefly NU] and located in rural area. According to Fuad Fanani, the leaders of *pesantren* have different perspective about what sharia is. The conservative leaders see that sharia is an absolute text, which cannot be changed, while the moderate leaders tend to interpret the sharia. However, most leaders of *pesantren* agree with the implementation of Islamic Sharia to the state rule. In accordance with non-Muslims, Islamic sharia will protect and safeguard the non-Muslims, just like the condition of Medina during the era of Muhammad SAW. Ahmad Fuad Fanani, "*Jihad Memperjuangkan Syariat Islam; Pandangan Tokoh-Tokoh Pesantren di Jawa Barat*" unpublished paper, presented in 6th Annual Conference on Islamic Studies, 2006, held by Department of Religious Affairs in Bandung.

5 In Islamic law (fikih), *Khalwat* is the meeting of two person, man and woman, in the desolate place without *mabram* (family). Traditional *fiqh* prohibits it.

is not regulated by Islamic law, the law is based on the Criminal Procedure Code (KUHP) (Rumadi 2006).⁶

Nevertheless, many Muslim intellectuals disagree with the implementation of Islamic sharia. In accordance with the implementation of Islamic law in Aceh, Aguswandi states that the implementation of conservative sharia law in Aceh should be a lesson for everyone. He argues that, Indonesians should not repeat the failure to engage and deal with sharia and conservative groups. Furthermore, he adds that many of Indonesians failed to realize how Islam in Aceh was being exploited by conservative groups to promote something new, a different type of Islam that oppressed women, restricted freedom of speech, imposed a strict code of conduct and behavior that was against the local tradition and the nature of Islam itself (Aguswandi 2006; Mudhoffir 2017).

Moreover, the goal of the implementation of Islamic law as HTI endorsed is the establishment of Islamic caliphate in which many Muslim intellectuals disagree. Some of the intellectuals who reject the idea are Abdurrahman Wahid, Syafi'i Ma'arif, etc. It shows that the notion of Islamic sharia and caliphate is controversial among Muslims. Then, how to respond and overcome this controversy? In this context, I think what John Rawls introduces and Abdullah An-Naim develops are very useful to mediate between the idea of HTI and those who disagree with the idea.

6 Rumadi's research about various aspects of sullyng of religion and religious life in KUHP. Let see Rumadi, "*Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP*", Unpublished paper. Presented in the 6th Annual Conference on Islamic Studies, 2006, held by Department of Religious Affairs in Bandung. Rumadi gives some example of the sullyng of religion, such as in the 1990 Arswendo Atmowiloto (Chief Editor of *Monitor* Tabloid) who was sentenced for five years. Monitor October 15, 1990 released a polling about amazing figures. The result of this polling shows that the Prophet of Muhammad stands in the eleventh position. Because of this polling, Arswendo gets verdict for five years, because he is claimed sullyng of religion, specifically Islam. Another exaample is Shaleh in Situbondo conflict in 1996, and Mas'ud Simanungkalit who was sentenced for three years because he had claimed doing false interpretation for the *Qur'an*, etc.

From Rawls to An-Naim

John Rawls underlines his reason is public in three ways: (1) as the reason of free and equal citizens, it is the reason of the public; (2) its subject is the public good concerning questions of fundamental political justice in which the questions are of two kinds: constitutional essentials and matters of basic justice; and (3) its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity (Rawls 2003, 212-254).

According to John Rawls, the idea of public reason specifies at the deepest level of the basic moral and political values that are to determine a constitutional democratic government's relation to its citizen and their relation to one another. It means that public reason wants to search the common reason of all citizens either religious or non-religious doctrines. Rawls states that the proper domain of public reason is the public political forum, which provides for three different discourses to take place: "the discourse of judge in their decisions, and especially of the judge of a supreme court; the discourse of government official, especially chief executive and legislator; and finally, the discourse of candidate for public office and their campaign managers especially in their public oratory, party platforms, and political statement" (Rawls 1999, 575).

In public sphere, according to Rawls, all groups, communities, citizens, either secular or religious, have the same chance to ground what he calls "comprehensive doctrines" like religion, morality, or philosophy. Therefore, "the basic requirement is that a reasonable doctrine accepts a constitutional democratic regime and its companion idea of legitimate law. Therefore, further Rawls explains, "the central to the idea of public reason is that it neither criticizes nor attacks any comprehensive doctrine, religious or non-religious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity" (Rawls 1999, 574).

Using the public reason perspective, Abdullahi An-Naim states that Sharia will “play an important role in shaping and developing ethical norms and values that can be reflected into general legislation and public policy through the democratic political process”. The law will not be enforced by the state as a public law for constitutionalism, human rights and citizenship (An-Naim 2008). In this context, An-Naim suggests that the state should be neutral to keep freedom of every people to accept, reject or modify every human’s understanding to doctrines or religious principles. An-Naim concludes that although sharia has significant future in the public life of the Islamic society, it cannot be enacted by the state.

Public Reason as Court

Before describing further, it is very interesting to see how Hizbut Tahrir criticizes the thought of An-Naim. Farid Wadjdi gives three critical responses (Wadjdi n.d.). The first is the neutrality of the state. According to Wadjdi, the paradox of An-Naim thought is that at one side, the state must be neutral and at the other side, the state must be within the framework of constitutionalism, human rights and democracy. It shows that the state does not neutral, because the notion of constitutionalism, human rights and democracy are not neutral notion.

The second is that sharia cannot be enforced by the state. It is, according to Wadjdi, an incorrect notion in understanding the relation between state and Islam. Islamic caliphate is not theocracy but it is an Islamic system that distinguishes sovereignty (*as-siyadah*), which is in the right of Allah, and power (*al-sultan*) in the people. Furthermore, Islam, Wadjdi says, has universal and complete practical-doctrines. In economic, for instance, Islam also regulates about currency, which have to use gold.

The third is historical approach. The rejection of An-Naim to Islamic state is based on the history of Islam. According to Wadjdi, the rejection of Islamic caliphate cannot be based on the history because the

basis of Islam is *Qur'an*, *Sunnah*, *Ijma'*, and *Qiyas*. Then, Wadjdi explores the success of caliphate system.

In the context of formalization of Islamic sharia, which becomes pro and contra between HTI and other groups, it is important to see in the public reason perspective. The HTI's notion of formalization of Islamic sharia is based on contemporary phenomena of Muslims society. HTI claimed that democracy and Western cultures are incompatible with Muslim society and against the Islamic doctrines. Therefore, HTI offers Islamic sharia and caliphate as the only solution to solve all Muslims' problems.

Actually, HTI's proposal to solve Muslims' problems easily can be expressed by "an objective" language than ideological or, and, theological. Using an objective language to aspire Islamic sharia and caliphate in democratic society is more acceptable because Indonesia consist of several religions and beliefs that do not understand what HTI aspires. The technical term in Islamic teaching should be translated into objective language which can be understood by all people. Many scholars have been criticizing some notions, such as democracy, secularism and oppression in Muslim societies. However, they do not use theological language like HTI does.

On the contrary, other groups which disagree with the formalization of Islamic sharia and caliphate do not need to be rejected the whole idea. We can reject the reality that Indonesia faces multidimensional crisis, especially moral crisis. The rejection of the formalization of Islamic sharia is usually based on secularism idea which differentiates private like religion and public matters. This era (secularism), I think, in some places has been drawing to an end. It is a fact that there are many religious movements. HTI is one of those religious movements which invite to bring people back to religion. Several state laws which accommodate the Islamic teaching, like in Aceh, Cianjur, and other places must be understood as the resurgence of religion.

By public reason, we can open publicly conversation between pro and contra groups to the formalization of Islamic sharia. It is important because the conflicts often culminate in violence. We can see many cases of violence which occurs because of diversity and conflict, such as the tragedy in National monument. Sacks states that “the greatest single antidote to violence is conversation, speaking our fears, listening to the fears of others, and in that sharing of vulnerabilities discovering a genesis of hope” (Sacks 2002, 2). Therefore, reawaken the public reason is a way to open conversation, build bridge, namely making common language among different groups (Bagir 2006).

In addition, public reason gives significant space for religion to play role in society, either “formally” or “spiritually”. I agree to public reason which potentially makes religion has meaning for society to humanize human being.

Conclusion

The movements of HTI to the formalization of Islamic sharia and caliphate have been a controversy among people. Some people reject it while the others receive it. In a democratic society like in Indonesia, HTI should revise its ways in conveying its notion. Using particular ways of delivering the ideas would create appropriate space for conversation and discussion. Furthermore, the implementation of Islamic sharia into state law should be discussed in the public sphere. After the processes of discussion using appropriate methods, the final decision whether to accept or reject the idea is in the hands of the public.

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