

Religion And the Making of National Law; Literature Review

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Abstract

Religion has an important role in lawmaking, especially Islam in a country like Indonesia. Data used in this research consists of secondary data, which comprises published literature that fits the context of the research discussed. The researchers found that the role of religion in lawmaking was not independent of the historical, social, and cultural influences of the society concerned. Religious sources, such as Sharia and Islamic fiqh, are also used in the interpretation and development of national law. Religion also plays a role in shaping the values and moral norms underlying the legal system.

Keywords: Role, Religion, Islamic Law, Syariah, National Law

INTRODUCTION

Religion has been a profound and influential factor in human life throughout history. In many countries, religion plays a significant role in shaping the legal system and provides a framework of values and principles that govern society. The relationship between religion and law is a complex and multi-dimensional subject. Almost as a whole in society, the relationship between religion and law is interrelated and has a significant impact on the legal system and governance. Religion often plays a role in shaping legal principles, values, and norms, as well as influencing the establishment and enforcement of the law.

In Indonesia, for example, the state acknowledges several religions and protects the rights of religious persons. The state's legal system is based on the philosophy of Pancasila, which emphasizes the protection of religion and religious believers in national life. This means that the teaching of religion and law can be integrated into various aspects of social and legal structures. (Santoso et al., 2021; Rasyid et al., 2023).

Social structure is defined as a form of organization of society that influences the implementation of the law. Social structure acts as a confirmation of group identity and plays a function in developing social and legal norms. In addition, the relationship between religion and law is also evident in the existence of religious courts, such as Islamic courts in Indonesia. These courts deal with cases relating to family law, marriage, divorce, and inheritance, according to Islamic law. These laws are based on the teachings of the Quran and Hadith. (Salam, S. 2015). Nowadays, the religious court also settles disputes in the matters of law of obligations, that involved Sharia.

However, it should be noted that the interpretation and practice of Islamic family law may vary between different countries and different cultural contexts. It is recommended to consult with scholars and local authorities to understand the specific application of Islamic family law in particular jurisdictions.

The relationship between religion and law can vary in different societies and legal systems. The degree of religious influence on the legal system can be influenced by factors such as constitutional framework, historical context, and cultural traditions. It is a written constitutional document that represents the political struggle and aspirations of the Indonesian people in the past. (Praptini et al., 2019; Perwira et al., 2020).

The constitutional framework has several important purposes. First, it restricts the power of the government to prevent arbitrary actions and protect the rights of citizens. Second, it becomes the birth certificate of a nation, establishing the values and basic principles. Third, the constitution is the highest source of law in a country, providing the legal framework for the functioning of government and the protection of individual rights.

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Finally, the constitution plays a role in shaping the national identity of a country. (Engel, C. 2004; Massey, C. 2007).

Meanwhile, factors from the historical context, more detailed and in-depth, will provide a more comprehensive understanding of how the constitutional framework of Indonesia has formed and evolved from time to time consisting of the Declaration of Independence, the Creation of the Basic Law, the National Struggle, the UUD Amendment, and the Political Transformation. (Benz, A., & Colino, C. 2011).

Traditionally, culture refers to aspects of the cultural life of a society passed down from generation to generation, including religious beliefs and customs inherited by ancestors. Indonesia has a rich cultural diversity, including languages, customs, fine arts, dances, music, and culinary. It is therefore very important to preserve and promote Indonesian cultural traditions as such traditions are an integral part of national identity and enrich the social and cultural life of Indonesians. The Government of Indonesia has introduced programs to preserve cultural heritage by establishing art and cultural development centers and promoting them at the national and international levels. (Nafziger et al., 2010; Mautner, M. 2010).

It is then from some exposure to the above research on the role of religion in lawmaking becomes important to understand the complex relationship between religion and the legal system. The background that surrounds the debate about the role of religion in law shows the complexity of this issue. In countries with religious diversity, such as Indonesia, the role of religion in legislation is often a heated debate involving various social groups. These groups have varying views on the extent to which religion should affect or be kept separate from state law.

Religious diversity and different views on the role of religion in law create complex challenges for the establishment, implementation, and enforcement of fair and just law. Research into the role of religion in the formation of law became crucial to providing a broader understanding of the consequences and impact of the influence of religion on the legal system. Moreover, in an era of growing globalization, the role of religion in lawmaking also faces new challenges. The influence of cultural and global values, which often contradict religious teachings, becomes a related question of how far religious values and principles can persist and be relevant in an increasingly complex global context. (Kusuma, E. H. 2016; Anshar, S. 2019).

This research aims to study the role of religion in lawmaking and explore its impact on the implementation of law, justice, as well as social harmony. By understanding religion's role in lawmaking, it will be more likely to find a meeting point between law and religion and formulate recommendations or alternative solutions to conflicts that arise.

The importance of understanding the role of religion in lawmaking is not only limited to an academic context but also has significant implications for the development and sustainability of societies around the world. Through this research, it is expected to gain a deeper understanding of the relationship between religion and law, as well as to produce recommendations that can facilitate dialogue and agreement in dealing with conflicts related to the influence of religion in lawmaking.

RESEARCH METHOD

The method of research carried out in this research is by conducting literature research. The literature research method is a research approach that collects and analyzes scientific literature relevant to the subject of research. This method involves the search, selection, examination, as well as synthesis of existing works of literature. Literary sources used include books, and journals, both national and international. After identifying relevant literary sources, researchers select the sources that best match the research subject. (Champe & Kleist, 2003; Thorne, 2013; Christensen et al., 2011).

As a researcher, what is done in the study of literature is always to record and refer to the literary sources used and compile a list of corresponding libraries. It's important inining academic integrity and preventing plagiarism. Besides, researchers always keep objectivity and don't be entirely opposed to one point of view.

RESULT AND DISCUSSION

Definition of Law

Law is a set of rules and regulations that govern the behavior and actions of individuals in a society. The law is deemed binding and officially recognized by authority or government. (Teitel, R. G. 2011). The purpose of the law is to create and maintain justice, order, and harmony in society. The law that creates justice guarantees the existence of legal certainty in society and public order, so this category of law has a function to realize social justice by regulating what can and should not be done and protecting people to feel safe and comfortable. (Sikkink, K., & Kim, H. J. 2013). From the perspective of legal philosophy, the purpose of law is purely to realize justice, which is closely related to rights and obligations. Aristotle, one of the philosophers, argued that the law was aimed at achieving justice in the environment of society and giving every citizen the rights they should have. (Venzke, I. 2012).

Law also serves as a tool for creating and maintaining order in society. With clear and binding legal rules, every individual is expected to abide by the applicable norms and act in accordance with the established provisions. Through legal regulation, people can be directed to behave according to norms that are recognized and respected, so that conflicts and tensions between individuals can be minimized. The law provides a clear and structured framework for societies to interact with each other, both individually and in the broader social context. (Huxley et al., 2020).

The law to create harmony in society is to provide a legal framework that promotes equality, justice, and respect for diversity. By establishing and enforcing laws that protect the rights of all individuals, regardless of their background or characteristics, the law ensures that everyone is treated fairly and equally. It helps prevent discrimination, prejudice, and social conflict that can disrupt harmony in society. (Herve et al., 2001).

Legal institutions, such as courts and law enforcement agencies, play an important role in maintaining harmony by upholding the rule of law and ensuring that the law is enforced consistently and fairly. They provide mechanisms for resolving disputes and handling complaints, which helps prevent individuals from taking the law into their own hands and turning to violence or law enforcement on their own. (Jackson et al., 2012).

In addition, the law also serves as a tool for responding to and resolving social conflicts. Existing laws may include provisions or dispute settlement mechanisms that help mediate the parties involved in the conflict. In cases of conflict between individuals or groups, the court process can give a fair and objective decision for reconciliation and recovery. (Beck, T., & Levine, R. 2005).

The law can also encourage public participation in policy-making and decision-making processes that affect people's lives. By involving the public in the decision-making process, the law can create a space for dialogue and discussion that allows the various parties to have a voice and their interests to be equitably accommodated. (Menell, P. S. 2019).

The law plays an important role in creating harmony in society by providing a fair legal framework, ensuring consistent law enforcement, addressing social conflicts, and encouraging public participation in decision-making that affects life together. Among them, the Law serves to regulate and control various aspects of inter-human interaction, including criminal law, civil law, constitutional law, international law, and customary law.

Criminal law refers to criminal law, which includes rules that define prohibited acts and appropriate criminal acts that can be punished. It is a set of rules that determine what acts are forbidden and classified as criminal, as well as the punishment to be imposed on the perpetrators of such acts. Criminal law does not create the norm of law itself. The purpose of criminal law is to regulate offenses and crimes against the public interest, by outlining the definitions, purposes, types, and principles of the criminal law based on the book "Introduction to the Law of Indonesia. In classical and modern doctrine, the meaning of criminal law is based on rules relating to acts prohibited in criminal acts and contains provisions concerning punishment or sanctions for the offender. The importance of criminal law is based on *ius poenale* and *ius puniendi*, whereas the type of penal law is founded on its functions and benefits. (Tomalili, R. 2019).

Civil law is a set of legal regulations that regulate the relationship of one legal subject with another by reference to the personal interests of the legal subject. Civil law governs the rights and obligations of individuals in society, especially in terms of economic activities and personal interests. Civil law is governed by the provisions listed in the *Burgerlijk Wetboek* (BW), which is civil law in Indonesia. The main purpose of civil law is to protect the interests of individuals and ensure the existence of justice in relations between individuals with individuals or individuals with legal bodies. Civil law regulates various aspects of social life, such as ownership rights, contracts, inheritance, and legal liability (Muljadi & Widjaja, 2003). Civil Law is an important part of the legal system in Indonesia and serves to regulate and resolve civil disputes between the parties involved. The sources of civil law consist of various provisions of law, including the provisions contained in the BW, the Supreme Court's judgments, and other provisions relating to civil law. The application of civil law also covers the general principles of law recognized and adopted in the civil law system in Indonesia. Examples of the application of civil law in Indonesia include the settlement of civil disputes between individuals in cases of contract failure, lawsuits concerning land ownership rights, or the division of inheritance. (Fuady, M. 2014; Wardiono et al., 2021).

Constitutional law is a branch of law that focuses on the setting and interpretation of a state's constitution. The Constitution is the supreme law of a country which establishes the foundations of government, citizens' freedoms, fundamental rights, government structures, and the authority of the institutions of the state. (Thaib, D. 2005; Konstitusi, T. P. H. A. M. 2010).

International law is the legal framework that governs relations between States or other international entities. It includes rules and principles that govern the conduct of States in the fields of diplomacy, trade, human rights, and armed conflict. The development and practice of international law are becoming increasingly complex due to the changing nature of international relations. Sources of international law include treaties, customary international law, general principles of law, and judicial decisions. (Shaw, M. N. 2017; Cassese, A. 2005).

The customary law is a law or norm derived from customs or customs of Indonesian people to regulate behavior in social life. The customary law is an unwritten rule and a guideline for the entire society in Indonesia, upheld by indigenous Indonesians in daily life both in the city and in the countryside. (Diala, A. C. 2017).

Thus, from some explanations of law, it can be concluded that law plays an important role in society inining order, justice, and the protection of individual rights as well as regulating relations between individuals, entities, and states both at the national and international levels.

Definition of Religion

Religion is a system of beliefs, beliefs, and spiritual practices that involve the veneration, worship, and association of man with what is considered to be a higher, transcendent, or divine power. Religion can include beliefs in gods or many gods, as well as various myths, rituals, ethics, and moral teachings related to such beliefs. (Burrell, D. B. 2016).

Religion as a form of belief in God or gods is the belief that there is a higher, transcendent, or divine entity that has power and influence over the universe and human life. In some religions, gods are regarded as creators, life-givers, and authorities that influence and govern the world. (Holley, R. 2016).

The concept of God or gods in each religion can vary, in quantity, nature, attributes, and the way they interact with humanity. Some religions, like the monotheistic ones, believe that there is only one God worshiped, while the polytheistic ones believe in many gods or spiritual beings. Besides, there are also non-theistic religions that focus on aspects of spirituality and morality but do not acknowledge the existence of a God or a god in the traditional sense. However, the forms of belief in gods vary widely across religions and cultures. Each religion has a unique view and belief about the authenticity of God or god, and various practices, rituals, prayers, or worship can be performed to honor and relate to entities considered divine powers (Campbell, H. A., & Tsuria, R. (Eds.). 2021).

Religion is not apart from the rituals performed by humans. Rituals in religion are a series of acts or practices that are regularly carried out by the people of religion as a form of veneration, worship, or relationship with the

divine entity. These rituals may include prayer, ceremonies, sermons, fasting, donations, or other practices that refer to certain religious beliefs and traditions. (Fuller, R. C. 2001).

In religions such as Islam, Christianity, and Hinduism, rituals play an important role in their embrace. Ritual acts are considered to be a means of strengthening relationships with God or God, achieving inner peace, obtaining forgiveness of sins, or attaining other spiritual purposes. Rituals are also seen as a means of expressing beliefs, preserving religious traditions, and strengthening inter-religious social ties. For religious people, it's important to understand the meaning behind every ritual they do. Through rituals, they can deepen their understanding and experience of religion as well as sharpen their awareness of their relationship with God or other divine entities. However, sometimes rituals can also be empty formalities without proper understanding or enlightenment. (Wynn, M. 2005).

Religion usually provides moral and ethical guidance in everyday life, as well as the norms and values followed by the community that practices it. Religion also often provides a social structure that allows its followers to gather and practice spiritual unity. (Ratcliffe, M. 2014).

Religion can play an important role in the lives of individuals and societies, providing a sense of purpose, comfort, and moral guidance. Besides, religion can also be the basis of the social and cultural identity of a society. However, it should be borne in mind that religious definitions and practices can vary worldwide, and each religion has its own characteristics, beliefs, and practices.

Relationship Between Religion and Law

The relationship between religion and law can vary depending on the different cultural, social, and legal contexts. In some societies, religious principles are directly incorporated into the legal system, resulting in the existence of religious law or the application of religious principles in legal decision-making. For example, countries that apply Islamic Sharia law, such as Saudi Arabia and Iran, where religious texts and interpretations play a role in regulating legal principles and practices. (Sandberg, R. 2011).

In other places, religion and law may have a more indirect relationship, where religious principles influence social values and ethical considerations that then form the legal system. This can be seen in countries with secular legal frameworks, but where religious beliefs and traditions still play an important role in shaping social norms, cultural practices, and legal debates. (Huxley, A. 2012).

Thus, the relationship between religion and law is complex and can vary significantly between states and different legal systems. Factors such as dominant religion, historical tradition, political ideology, and social values, all influence how religion and law interact in a particular context.

Today, the separation of religion and law is a principle enforced in many secular societies, where the legal system is designed to be independent of religious influence. In this context, law is based on constitutional principles, human rights, and a pluralistic understanding of justice, which aims to provide equal protection and treatment to individuals with different religious beliefs or those who are non-religious. (Hosen, N., & Mohr, R. 2011).

In general, the relationship between religion and law is complex and can take various forms depending on the specific cultural, social, and legal context of a country or territory. Since each culture has unique religious beliefs and legal practices, the influence of religion on law can be very different in each country or region. Moreover, the social context, including cultural and social values as well as historical traditions, can also influence how religion and laws interact in a particular society.

Religious Perspective on the Relationship between Religion and Law

The perspective of religious figures on the relationship between religion and law may vary depending on the beliefs, traditions, and interpretations of religion adopted by each religious figure. Here are some of the perspectives that may be expressed by religious characters:

Religion as the primary source of law: Some believers believe that religion is a primary or authoritative source in the establishment of law. In this view, religious law is regarded as a divine revelation or guidance given by

God to mankind. Religious principles are considered higher and the main basis for the formation and application of law in society.

Religion and law as separate domains: Some religious figures consider religion and law to be distinct entities, although they can interfere. In this view, religion and law have different roles and functions. Religion is seen as a spiritual and ethical guide to the individual, while law is a general rule in society to maintain order and justice.

Religion as an ethical inspiration in law: Another perspective is that religion can provide inspiration and ethical values that are important in lawmaking. Although the law is not entirely based on religion, religious principles can influence the formulation of legal policy by emphasizing the importance of moral and ethical values in justice and social well-being. They can use religious principles and theological understanding to reflect religious values in broader legal debates (Durham Jr, W. C., & Scharffs, B. G. 2019; Sandberg, R. 2011; Feldman, S. M. (Ed.), 2000).

However, it is important to remember that this view only reflects the diversity of opinions within different religious traditions and can vary between different religions. Regardless of the perspective expressed, the relationship between religion and law remains a complex topic and may vary depending on the cultural, social, and legal context in a particular society.

Comparative Reviews of Several Countries

To provide a comparative overview of the relationship between religion and law in some countries, here are some examples:

Saudi Arabia: Saudi Arabia applies Islamic Sharia law, which is widely based on the teachings of Islam. The Sharia courts are the most important institutions in the legal system, and the foundations of Islamic law are applied in various aspects of public life, including marriage, divorce, inheritance, and criminal matters. (Van Eijk, E. 2010).

United States: The United States has a legal framework guided by the principle of separation of religion and state. Although the country has a religiously diverse population, the constitution guarantees the right to freedom of religion and prohibits the government from adhering to certain religions or issuing laws that violate religious freedom. (Farizky, K. A., & Suherman, M. F. 2024).

Iran: Iran is a country that applies the law based on the state interpretation of Shia Islamic teachings. Islamic Sharia law is the primary source of law and is applied in various fields, including the justice system and criminal punishment. (Mir-Hosseini, Z. 2010).

India: India has a secular legal system, with a constitution that recognizes religious freedom and protects the rights of citizens to practice and practice the religion of their choice. (Baxi, U. 2007).

England: Britain uses a common legal system based on jurisprudence and law. Despite the influence of the history of Christianity on the development of law in Britain, the legal system in the country is now more secular and does not directly adopt certain religious rules. (Stephen, J. F. 2014).

Israel: Israel is a country with a majority Jewish population. Israel's laws reflect religious sensitivity in society's life, with laws based on Jewish teachings, such as marriage, divorce, inheritance, and citizenship. (Mautner, M. 2011).

Japan: Japan has a strong history and culture related to religion such as Shintoism and Buddhism. Although religion influences Japanese culture and values, the law in Japan is based on the common legal system (jurisprudence), although there are some considerations related to religious freedom (Goodman, C. F. 2017).

Brazil: Brazil is a country known for its religious diversity. The law in this country is based on civil law (código civil) with recognition of the law relating to marriage and family applicable to all citizens, without priority to a particular religion (Nenova, T. 2006).

Pakistan: Pakistan is a country established as an Islamic state and has laws based on Islam. Pakistan's constitution gives special status to the Islamic religion and the Sharia courts are responsible for cases related to family, inheritance, and criminal law, while civil law also applies to some aspects of life. (Mehdi, R. 2013).

The relationship between religion and law is a complex topic and is heavily influenced by historical, social, and political factors in each country. This review provides only a general overview and does not cover all the countries or variations that may exist in each of those countries.

The Positive and Negative Impact of Religious Influence on Lawmaking

Religious influence in lawmaking can have a positive or a negative impact, depending on the social, political, and cultural context of the country. Positive impacts of religious influence in lawmaking include:

Morality and Ethics: The influence of religion can help consolidate and sharpen moral and ethical values in law, such as advancing justice, peace, equality, and humanity.

Consistency and certainty of law: Consistent and constant religious guidance at all times can help provide a clear and consistent framework in the formulation of law, thereby promoting stability and security in the legal system.

Community and Solidarity: Religious influence can strengthen solidarity and a sense of solidarity within a community by building shared values based on religious teachings. (Togaibayeva et al., 2021; Richardson, J. T. 2006).

The negative impact of religious influence in lawmaking includes:

Discrimination: Religious influences that are dominant or exclusive can lead to discrimination against minority groups or different beliefs, which may violate the principles of equality and justice.

Restrictions on individual freedoms: Laws that are heavily influenced by certain religious teachings can result in restrictions on personal freedom, such as LGBT rights, reproductive rights, and religious freedom.

Conflict and violence: Tensions between different religious interpretations can trigger social conflicts, violence, and extremism that are detrimental to stability and peace in society. (Vodenko, K. V., & Tikhonovskova, S. A. 2015; Padilla, L. M. 2000).

A balance between religious values and the principles of justice, freedom, and equality in lawmaking is crucial to achieving a just, inclusive, and moral-minded legal system. In every country, efforts to respect the diversity of beliefs and formulate laws that meet the standards of human rights are key to creating a balanced and equitable legal system following universal human rights foundations and principles of justice can provide a solid foundation in efforts to this goal.

CONCLUSION

The role of religion in lawmaking, especially Islam, plays an important role in the lawmaking process, especially in countries such as Indonesia. The influence of religion in the formation of law can be observed in many ways, among them: first, there are special laws that apply specifically to Muslim individuals, such as marriage law, waqaf, and the Islamic judicial system. These laws are formulated to accommodate the needs and practices of the religious community of Muslims. Second, Sharia and Islamic fiqh, as religious sources, have been used in the development and interpretation of national law. These religious sources guide the ethics, morality, and values that can shape the legal system. Furthermore, religion generally plays a role in shaping the moral values underlying the law system. Religion provides a framework of values that guides individuals and societies in their understanding of what is right and wrong. These moral foundations may shape and influence the establishment and implementation of the law.

It should be remembered that the role of religion in the formation of law is still a controversial topic and can vary in different legal, social, and cultural contexts, which in the establishment of law in a country is influenced by social, cultural, and historical factors.

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