



Madani Society in Perspective Islamic Law

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ABSTRACT:- Madani society discourse is always interesting to be clearer. Many opinions intellectual striving to bring their opinions quiet about it. This research seeks to analyze the opinions of the intellectuals to take some of the conclusions that describes madani society. Results of analysis concluded that (1) the madani society of civilized society as it was built by the Prophet with the frame of Islamic law, (2) Islamic law as its basis should give beneficiaries, (3) required "*fiqh* local" to address issues in the community.

Keyword:- madani society, beneficiaries, Islamic *fiqh*

I. INTRODUCTION

Discourse civil society has entered a phase that is more clear, calm, and productive to be analyzed and assessed. The intellectuals began to more easily explore the meaning and substance it contains. Indonesian Muslim intellectuals is in full swing it into the discourse with noble intentions, to provide a reference value on the religious politics in Indonesia is more intellectual than practical political movement. In fact, this discourse, consciously built by Muslim scholars to give importance on Islamic and Indonesian-ness in one breath alone, Islam and Indonesia, are two sides of the same coin. Because, Indonesia is a "space" where Islam can be "grow" to fight, live, and thrive. In fact, from a religious perspective, Indonesiaan-ness and Islamization is not alternative to each other, but the fact that two circumstances were interrelated.^[44]

Fully understood that, there are also someone who try to equalized with the discourse of civil society^{[11][15][16][21]} but there also saw it as a mosaic linked beautifully.^[14] Interesting to observe is the term *madani* society is not a term that emerged from the realm of Indonesian (Malay), but from idiom typical of Islam, especially from *مجتمع* (*community*) and *مدني* (*madani*). Nevertheless, the term is increasingly arousing and stimulating the thinkers of Islam in Indonesia to contribute intellectual involved in the case asserted: "Islam and Indonesia are two inseparable reality". Islamic struggle and Indonesian-ness has reached the stage of perception that Indonesian society recognized Islam as his religion and to make Indonesia as their motherland, as he embodies the values of Islam in social life in Indonesia. Here, the concept of "*madani* society" becomes urgent to vetted caused by the requirement.

Regardless of the debate on *madani* society where the concept^{originated[4][10][41][24][25]}, this paper wants to analyze it from the perspective of Islamic law. This inquiry intend to prove that if the true concept of *madani* society it comes from inspiration Medina community built by the Prophet Muhammad^[33], so that inspiration may not be circumvented by the development of Islamic law when the Prophet is located.

Madjid thought about the term of *madani* with synonymous society communities cultured and civilized. He stated that "the use of the Arabic term "*madani*" (from the word "*madinah*") implies the idea of a civilized society as opposed to people who are not civilized or not cultured¹¹. Thus, the term *madani* is a term that refers to the civilized communities wrapped by the frames of law. Thus, the role of law is crucial to the emergence of the term *madani*.^{[25][26][8]}

A clear illustration of the meaning of the term "*madani*" is also explained by Schumman:^[37]
"In general, the word '*madinah*' is described as 'the place', where the *din* enforced, or point of entry into force of *din*. Thus, the notion of *madani* understood *madinah* likewise, is closely associated with religion, it is not too much different than understanding polis in ancient Greece. This understanding also appears even in modern Hebrew in which "*Medinat*" is used in the sense of "states", such as "*Medinat Israel*", the state of Israel. Also

there a relationship with (the law) religions, namely Judaism and its settings as it be developed in the Talmud, remains very real, so that enforcement of the law against the Gentiles remains oriented on the "millet" inherited from the Sultanate Osmani through government mandate English. But what is imposed in *madinatal-nabi*? With reference to the Al-Qur'an al-Karim then we can say what I've already mentioned: Din Allah is Islam, and he showed tauhid".

Opinion Schumann almost the same as Madjid. He said that the term "madani" is also a concept that is found in Hebrew. Therefore, the concept of "madani" not just "property" exclusively Muslim, but also "belongs" Judaism as well.^{[23][11]}

The words "*madani* society" first time introduced by Dato Seri Anwar Ibrahim, when the Deputy Prime Minister and Finance Minister of Malaysia, in a scientific forum Istiqlal Festival in 1995. In his lecture entitled "Islam and the Formation of *Madani* Society," he argued that the *madani* society is defined as a social system that is prosperous of the moral principles that ensure a balance between individual freedom with stability society^{[19][33]}.

The notion of *madani* society according to Islamic intellectuals in Indonesia described by Mulkhan, Effendy and Rahardjo. Mulkhan argue that the term of *madani* society has at least three meanings. First, *madani* society is a free society against any form of state intervention that controls the entire public discourse in the form of the constitution and the hegemony of the ruling elite who tend to be treated as always true under state protection is "sacred"^{[29][14][11]}. Secondly, *madani* society, is a deconstruction of the role of the state, modern institutions and the shari'a. This is due to the failure of jurisprudence in performing a public role as the people's demand kontemporer^{[31][33]}. Third, civil society is a criticism of bureaucratism religioitas such as politics and economics. In addition to giving the definition of *madani* society itself. Mulkhan also provides a definition of *madani* society in the sense of "civil society" that is an order of a society that really opens ideology or theology, because it is the public that is most entitled to formulate ideologic up to the ideals of their people through the induction process sustainable.^{[29][41]}

Further Mulkhan found the ideal civil society is not a society when truth and goodness into *elite hegemony* (the shari'a experts or religious leaders) who rely on social status and education and history sosialnya^{[28][29]}. The Effendy believes that the concept of *madani* society is the creation of institutions or organizations outside the country, which has relative autonomy, and plays the function of control over the process of organizing social life and statehood^[14]. Meanwhile, in another perspective, Rahadjo argues that "*madani* society" contains three things: religion, civilization, and city^{[33][35]}. Mulkhan apparent from the opinion that the concept of civil society is an attempt to create a society without state intervention, reducing the influence of the ulama (religious leaders)^[29] with all the authority they have. However, according to Effendy, *madani* society can be created if the state provides an opportunity for non-governmental institutions to develop without the intervention of state.^[14] From this opinion only Mulkhan connecting *madani* society with *fiqh*. As if not the realization of *madani* society is caused by the dominance of *fiqh* in the country.

II. OVERVIEW OF ISLAMIC LAW

The term *fiqh* is a term commonly jurisprudence we heard.^[34] However, this term has become an interesting study, as follows: (a) worship, (b) mu'amalat, (c) munakahat, (d) jinayat, and even have many and varied book of *fiqh*.^{[7][30][34]} Books of *fiqh* is the result of thinking a mujtahid in an area that is the mujtahid response to social phenomena prevailing in the area. Thus, *fiqh* is not a book of laws that must be obeyed, it is simply a compilation of certain ulama opinion. So the truth becomes a very relative value and relatively.^[20] Nevertheless, in the days after the ulama author of the book died, then his disciples began to pursued books their teachers to serve as the main reference. In turn this reference books serve as a book of "absolute" for a kingdom.^{[27][28]} At this time began to occur stagnation *fiqh* thinking, where *fiqh* become the ruler orders^[12]. And only *fiqh* sanctioned the authority that should prevail in the kingdom^[20]. So *fiqh* never make "himself" as a barrier to the realization of *madani* society, but rather the authority makes *fiqh* as a tool to legitimize their rule. Thus, the assumption Mulkhan domination of *fiqh* seems weak when being stared at from a historical perspective. Thus, this argument doubtful.

Moreover, to say that the authority of the ulama that led the realization of *madani* society then it would be contrary to the history which shows that *Imammadzhab* in defending the ideals they have to deal with the authorities. And strangely they are said to have "authority", even when dealing with the authorities even got the inhumane treatment of the ruler.^{[21][22]} Ahmed is described as follows:

"Imam Hanafi died in prison, stripped and whipped Imam Malik, Shafi'i, who appeared before the time of Harunar-Rashid, escaped death but did not escape from prison, Imam Hanbali beaten and jailed. But none of those who succumb. Throughout their lives the *Imam* revered as a saint and provide far-reaching implications, for example, nearly a million people attended the funeral of Imam Hanbali in Baghdad. Now their ideas dominated intellectual thought and religious persecutors millions of people while they were forgotten in the history books."^[1]

Thus, ulama of *fiqh* can not be said as a barrier to the creation of *madani* society. Instead, they always try to answer the issues raised by their people. If it is associated with the time of the Prophet as a *madani* society, it is not wrong if Umar quoted the opinion saying that as if may is suggested that the closer that period to the time of the Prophet more moderate ulama also the view itu.^[43] This means that the society is moderate, if not virtually *madani* society is a society which is close to the time of the Prophet periods of life. The question is it possible to create a *madani* society without the involvement of Islamic law as one of the principal instruments ?. In answering this question, it seems we have to explain the nature of Islamic law (*maqashid al-shari'ah*). Muallim and Yusdani argues that the essence of the concept of *maqashid al-shari'ah* is to bring goodness and avoid vices or benefit and reject harm. Term that is commensurate with the core of *maqashid al-shari'ah* are beneficiaries, because the determination of law in Islam should be geared towards *maslahat*.^{[28][43]} Thus, it can be said that the purpose of the establishment of Islamic law is to achieve *maslahat*. If *maslahat* which is the goal of Islamic law *maslahat* it was only applicable to this specific area.^{[28][43]} Because, not necessarily serious benefits for certain areas, *maslahat* will also be applicable to other regions.

In the study of Islamic law, the concept of *maslahat* is understood as the method used when performing *istimbat* (establish laws based on the arguments contained in the texts). The Islamic jurists (*fiqh* experts person) divides *maslahat* destination Islamic law into three categories according to priority: the primary purpose (*al-dlaruriyyat*), the secondary purpose (*al-hajiyyat*), the tertiary purpose (*al-tahsiniyyat*).^[5]

First, *al-maslahah al-dharuriyah*, the benefit related to the basic needs of mankind in the world and the hereafter. Included in this benefit are five commonly referred to *al-kulliyi / at al-khamsah* or *maqasid al-shari'ah* (five universal principles or objectives of Islamic law, namely: (1) maintenance of religion, (2) nourishes the soul, (3) maintain a sense, (4) nurture offspring, and (5) maintain the property).^{[5][40]}

Secondly, *al-maslahah al-hajiyah*, which benefit required in the basic benefit or enhance previously shaped fundamental basic human needs. At this stage, it is considered that any benefit that supports the first benefit is a benefit *hajiyah*. If someone wanted to nurture the soul, then the law enforcement authorities is absolutely necessary. This is in order to create a benefit in maintaining life and property. Thus, the benefit is keeping the first benefit. On this basis the branches of Islamic law developed, whether criminal, civil, constitutional, political, legal or otherwise.^{[5][22]}

Third, *al-maslahah at-tahsiniyyah*, the complementary nature of the benefit is in the form of flexibility to complete the first benefit. If we are to maintain the soul, then the need for a psychiatrist is a necessary if not an absolute say in every area.^{[5][40]}

Thus the concept of *maslahat* under Islamic law. Concepts are always taken into consideration in finding legal ulama. The ulama (*mujtahid*) in *ijtihad* could not detach himself from the reality of people who will apply the law it finds. In the context of Indonesia, MUI is one of the institutions that give *fatwa* (judgment) of Islamic law. MUI's *fatwa* was a response to questions from applicants *fatwa*.^[30]

In addition to MUI, religious organizations also have a board in charge of Islamic law. In this study, will be exemplified two largest Muslim organizations in Indonesia, the NU and Muhammadiyah. First, NU (Nahdlatul Ulama), 30 have a board Bahtsul Masail ad-Diniyyah Nahdlatul Ulama. The Commission serves as a forum legal studies that discuss religious issues. The commission's decision in the form of *fatwa*, later expected to be a guidance for NU members in practicing religion in accordance with the concept of *Ahlusunnah wal Jama'ah*.^[44]

Secondly, Muhammadiyah has the Majelis Tarjih Muhammadiyah that serves not just pick and strengthen one opinion in *fiqh*, but also specifically examine a various of Islamic law that faced Muslims, from classic issues until problems kontemporer.^[38] In its decision letter No. PP Muhammadiyah no 5 / PP-1971 in 1971. In *Qa'idah Lajnah Tarjih* mentioned, among others, the principal task of the Majelis Tarjih Muhammadiyah are: a) to investigate and understand the Islamic religious sciences to obtain purity; b) develop faith, morals, worship, and muamalah worldly; c) give *fatwa* and advice, either on request or initiative of the Majelis Tarjih Muhammadiyah itself if deemed necessary; d) channeling dissent / understanding in the field of religion to a more *mashlahat*; e) enhance the quality of the ulama; and f) other things in religion that is assigned by the PP-Muhammadiyah.^[32]

Thus, the role of Islamic law in building *madani* society is significant. Issues - contemporary issues that arise in the midst of society, always need an answer as soon as possible. If the answer or response is not promptly given, then it is possible the community will create its own Islamic law. For example, the issue of

mating between religions, if the *ulama* does not provide legal certainty Islam clear on this issue, the marriage between religions will be done, on the grounds that the mating between religions (married to a woman *ahl al-kitab*) is permissible, by reason of the letter *al Maidah* verse 5. However, the MUI and the Majelis Tarjih Muhammadiyah prohibit marriage among religions.^{[32][39]} On the grounds that such a model marriage more *mafsadat* (badness) than *maslahat* (goodness). Thus, the role of the *ulama* (*mujtahid*) is indispensable in creating a madani society in order to find the rule of law in Indonesia.^[37]

III. ISLAMIC LAW IN INDONESIA

The next question is what kind of Islamic law that must be applied in Indonesia to achieve a madani society?

Answering the above questions, it seems there must be a redefinition of the Islamic law in accordance with the Indonesian context. So far, only two characters who try to formulate how Islamic law in the context of Indonesian-ness.

First, Ash-Shiddieqy who introduced the "*Fiqh Indonesia*". He defines "*Fiqh Indonesia*" as *fiqh* applied in line with the character of Indonesia. According to him, to get to the *Islamic fiqh* (read: Islamic law) with Indonesian concept, there are three forms of *ijtihad* that should be encouraged by the scholars and experts in Islamic law, namely: (1) *ijtihad* with the laws classifying products of *ulamamadzhabin* the past. It's intended to have the opinion that is still suitable to be applied in our society. (2) classifying *ijtihad* with laws based solely on customs and atmosphere of the society in which Islamic law is evolving. (3) *ijtihad* by seeking the laws of the contemporary issues that arise as a result of advances in science and teknologi.^[3] Thus, the idea of "*Fiqh Indonesia*" posed by Ash-Shiddieqy is trying to spawn Islamic law which is in accordance with the customs and changes growing in Indonesia.^[3]

Secondly, degree Azra who introduced the "National madzhab (Indonesia)".^[8] These madzhab built solely through the efforts of the reform of the Shafi'imadzhab in accordance with the local conditions of Indonesian society. The results of his thinking can be seen in UU No. 7/1989 on Religious Courts and the agreement compilation of Islamic law. There are at least three things the relevance of thought in UU No. 7/1989, namely: (1) making authority of religious courts uniformly throughout Indonesia; (2) align the entire Islamic courts in one unified system, all have the same authority over matters of marriage, inheritance, and benefaction; and (3) removing the inauguration of the country tribunal decision produced by the court agama.^{[5][7][40]}

Thus thought Ash-Shiddieqy and Azra, these two men have laid the foundations of Islamic law that the need for personality Indonesia to reopen the doors of *ijtihad*. Thus, again there is no evidence of *ulama* to a barrier creation of madani society in Indonesia. They actually have a forward thinking in seeing the changes the era.^{[3][8]}

If you look at the desire of the two figures above, it is to create a madani society in Indonesia is not so difficult. Because, what is desired by the two leaders had a good response by the Indonesian Muslim intellectuals. We see now the dynamics study of Islamic law was not confined to schools, but also belongs to the campus through discussions, routine studies, seminars and so forth. This dynamic continues to evolve along with the growing reform Islamic thought in Indonesia.

Nevertheless, to enliven the study of Islamic law that fits with madani society in the context of Indonesian-ness, the article will offer a form of Islamic legal studies ie local *fiqh*. Local *fiqh* is a form of Islamic legal thought that appears in every region in Indonesia in accordance with the circumstances of the region as far as these thoughts bring serious benefits for people in the region as has been done by Imam Hanafi in Baghdad, Imam Shafi'i in Madinahhis *qaulqadim* and in Egypt with his *qauljadidi*.^[22]

The reason the article initiated the local jurisprudence and madzhab of nation *fiqh* (Indonesia) offered by Hasbi ash-Shiddieqy and Hazarin not fully resolve the question of race. That is, what they have to offer more to the similarity unification of Islamic legal thought. We offer local *fiqh* formation as a response to local problems of regionalism. In turn, this does not mean Islamic law arising out of the area but rather the unification of Islamic legal thought that has been initiated by the classical *ulamato* address the issues raised in the each areas.^[1]

In the context of madani society, the legal difference Islam is not against the Islamic *shariah*. Growing Islamic law in the history of the various Muslim. There Hijaz Islamic law, Kufa, Egypt, Syria, India. All growing Islamic law in this area is the result of local *ulama* thought that an answer to the problem these area.^[22] Therefore, Islamic law is the result of thinking that is local rather than national. Thus the idea of the *fiqh* local authors offer is one of the forms of Islamic legal thought emerging from each region. There is no procedure for extracting Islamic law or *fiqh* local discovery of the ideas of absolute *ulama* areas. These *ulama*, the future is the *ulamawho* understand the intricacies of Islamic law and understand very well about the customs of the region. If issues do arise from the area, do not need to wait for the conference, congress, or forum. The problem is sufficiently answered by the *ulama* of the area.

VI. CONCLUSION

First, madani society is a civilized society that was built by the Prophet in Medina City and be fully bound by the frame of Islamic law. The law became a major pillar in the formation of madanisociety. Without the implementation of Islamic law, it is difficult to realize the madani society, if it was almost impossible. The role of Islamic law have been shown by the Prophet when he was in Medina.

Second, Islamic law formulated by the *mujtahid* of Indonesia is Islamic law that bring serious benefits. If the Islamic law as far as understanding (*fiqh*) did not bring serious benefits, then the Islamic law need not be followed. Because, the truth value relative human understanding. So Islamic law is more a result of the dynamics of the mind *mujtahid*. Therefore, need to be encouraged mastery of the methodology for the youth of Islam to find Islamic law.

Third, it is important, that to create a madani society, it is necessary be reinforced idea of Islamic legal thought in the form of "local *fiqh*." The local *fiqh* will answer any problems that developed in the region, in line with the local characteristics of the various environmental traditions and customs, as well as what is happening in Aceh. Thus, the study of Islamic law will be more attractive to be enjoyed, not just national intellectual circles, but also feed that same role for local intellectuals. And this is eagerly awaited by young thinkers of Islam today.

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