



# SHARIA AND LOCAL WISDOM IN INDONESIA: A CRITICISM OF *JĀHILIYYAH* LAW MISINTERPRETATION

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**Abstrak:** Ada pendapat yang berkembang bahwa hukum yang tidak bersumber dari Al-Qur'an dan hadis adalah hukum jahiliah. Untuk menciptakan hukum nasional yang berkarakter Indonesia, perlu akomodasi kearifan lokal, tradisi, dan adat istiadat. Penelitian ini menggali pandangan para cendekiawan Muslim dan ulama tentang makna hukum jahiliah dalam merumuskan hukum nasional yang berkarakter keindonesiaan. Dengan menggunakan pendekatan fenomenologi, penelitian ini menunjukkan adanya perbedaan pendapat dalam memaknai hukum jahiliah. Sebagian berpendapat bahwa hukum yang bersumber dari adat dan budaya adalah hukum jahiliah, namun sebagian lainnya menentang pendapat tersebut. Pendapat terakhir mempertimbangkan prinsip *al-'ādah muḥakkamah*, *al-'urf* dan *maqashid al-shari'ah*. Dengan demikian, akomodasi kearifan lokal dan hukum Islam dalam perumusan hukum nasional diperlukan untuk menjamin pluralitas sumber hukum nasional.

**Kata kunci:** hukum jahiliyyah; hukum Islam; adat; kearifan lokal

**Abstract:** There are some opinions that laws not derived from the Qur'an and hadith are jahiliyyah laws. In order to create a national law with Indonesian characters, it is necessary to accommodate the local wisdom, traditions and customs of the people. This research explores the views of Muslim scholars about the meaning of *jāhiliyyah* law to formulate national law with Indonesian characters. The study used a phenomenological approach showing that there are differences in viewing the notion of jahiliyyah law. Some believe that the law originating from customs and culture is jahiliyyah law, while the others argue against it. The latter considers the principle of *al-‘ādah muḥakkamah*, *al-‘urf* and *maqāṣid al-sharī'ah*. The accommodation of local wisdom and Islamic law in the formation of national law is to ensure the plurality of national legal sources.

**Keywords:** *jāhiliyyah* law; Islamic law; custom; local wisdom

## Introduction

The re-emergence of the term *jāhiliyyah* to refer to the ignorance era and before-Islam era nowadays is meant to point to people or groups of people who take law sources other than the Quran and hadith. The attempt to blend Islamic law and local cultures in Indonesia is accused of dragging Islam back to the *jāhiliyyah* era. Custom law/local wisdom reception refusal is occasionally confronted with QS al-Mā'idah [5]:50: '*is it jāhiliyyah law they want, and whose law is better than Allah's law for those who believe?*' this results in understanding polarisation, restlessness and frictions.

Many experts have discussed *jāhiliyyah* law. Sayyid Quthb, for example, said that jahiliyyah law is a law that is not taken from Allah's law but lust and human point of view in addition to *ulūhiyyah* Allah's refusal (Nurhuda, 2018). Similarly, Haris (2016) described jahiliyyah law as any rule that contradicts sharia; anyone practising jahiliyyah law is called the unbeliever, unjust and wicked. It occurred because laws in *jāhiliyyah* era were described as full of injustice which made laws in that era named a symbol of defect, in particular, breaking the public order and causing long-lasting catastrophe source (Usman & Yunta, 2020; Maya et al., 2020; Sarbini & Maya, 2019). People's behavior in this modern era is quite similar to that of *the jāhiliyyah era* (Fathurrohman, 2017), *one of which is the belief* in the zodiac, technology worshipping, online gambling and social-media-purpose praying (Imamuna & Sapil, 2021).

Interpreting Jahiliyyah law textually, in black and white, and judging those who respect custom law and Indonesian values, the jahiliyyah-law party will hinder the Indonesian-character law update. At the same time, this stimulated the rejection of Islamic values and formation of national law. As a result, the development of Indonesian law is applying an *ad-hoc* approach and is set apart with *tahayyur* and *taf'iq* (Anderson, 1976:42; Esposito, 1982:94–102; Anderson, 1975:82–83).

In Islam, a text or phenomenon misinterpretation occurs for some reasons, like the interpreter's tendency for the meaning they believe is true while ignoring what the text implies or existing phenomenon. The misconception is also caused by focusing on the matter while putting aside messages to the sender, receiver, and context. Rifai (2019) said that misunderstanding might occur when the receiver sees the message from the *sibāq*, *siyāq*, and *liḥāq* of a verse or phenomenon.

Misinterpretation can lead to various impacts like controversy and confusion (Miura & Yamashita, 2014; Granvik et al., 2017).

On the other hand, not many works of literature discuss misinterpretation theories despite the presence of theories of communication failure. Moreover, not only can misinterpretation happen because of the message receiver's different catch, but different cultures, backgrounds, knowledge and ideology also play (Sprenger, 2016). Sprenger (2016) also stated that one-way communication could lead to misinterpretation. In addition, the reader's logic and moral count (Açar, 2013).

It is a fact that *jāhiliyyah* laws criticize Indonesian Islamic legal products in which local culture is involved. This misinterpretation has created a discourse on the meaning of *jāhiliyyah*. The abuse of claiming *jāhiliyyah* laws has created textual religious laws ignoring locality and leading to radical religious attitudes.

Allah has set sharia to benefit humankind and avoid harms worldly and hereafter (Nur et al., 2020). Hence, this study is trying to see the implications of the jahiliyyah law interpretation dichotomy in QS al-Mā'idah [5]: verse 50. The study does not merely straighten the textual interpretation, but also discusses the discursive process since there is a strong correlation between ideology, method and approach when trying to understand the Quran. In particular, the study is meant to critically analyze ulama's outlook and arguments. The study focuses on the epistemological foundation of local Indonesian values in law according to the ulamas.

## Method

This is a qualitative study (Meleong, 2007: 4; Arikunto, 2013: 121), with a phenomenology approach (Mahmudin, 2021). This is to describe the ulamas' outlook and arguments on the meaning of jahiliyyah laws, particularly those in relation to creating Indonesian-nuanced Islamic law (Furchan, 1992: 21).

Laws are dynamic in their interaction with subsystems in a society (Karjoko et al., 2021). Therefore, one's understanding of a law depends on the written information (i.e. content, objective and merit) (Moosa & Abduroaf, 2022:15). The approach is used under

specific considerations, including the dynamic and unpredictable one's understanding, particularly religious messages (the Quran). The subject matter is abstract – in the form of spoken thoughts of ulamas. The qualitative approach was for the object matter of *jāhiliyyah* law and its relation with the effort to adopt customary law/ local values to create Indonesian-character laws.

As a result, primary and secondary data sources were employed. The former was taken through interviews with the ulama and competent Muslim academics. The latter was from textbooks, journals, the internet and other relevant literature. The collected data were analyzed using interpretative analysis of the meaning of *jāhiliyyah* law and the implication in QS al-Mā'idah [5]: verse 50.

### Epistemological Foundation of Indonesian Local Values

Ulama have a significant influence and role in Islam society. Ulama, as an academician, is considered a 'know-everything' person and the source of knowledge. He can transfer knowledge and values of Islam to society. Ulama, as a practitioner, has a practical role model in applying Islamic laws. They also ascertain that the laws work well socially, politically, and economically. Ulama, as a preacher, is responsible for introducing Islamic values to the 'already know' and the 'know-it-later' groups of people (Sahlan et al., 2019; Fealy & Bush, 2014). Ulama begins to actively guard the purity of Islamic values, enforce justice, protect people from potential abuse of power, and assist, if any, the victims (Bunza, 2014).

The following is a table about terms of *jāhiliyyah* law used by some people as extracted from social media.

Table 1. Three Meanings of *Jāhiliyyah*

Source	Statement	Note
Mosque of Mujahidin TV	Ust. AB: "Any law aside from the Quran- <i>ṭaghūt/jāhiliyyah</i> , e.g. wealth acquired during one's married life".	Laws aside from Qur'an
Youtube.com	Ustadz BA: <i>Jāhiliyyah</i> law is law with no model in Qur'an and Sunnah	Laws with no models in Qur'an and Sunnah

Source	Statement	Note
Annahl-islamic.sch.id/hukmu-al-jāhiliyyah/	Ustadz JS: <i>ḥukm al-jāhiliyyah</i> is any law other than those Allah's law or any rule contrary to Islam sharia. Although they may sound good and have been formulated by the world's law experts, as long as they do not parallel with religious teachings, the law is called <i>jāhiliyyah</i>	Laws formulated by other than Allah
Youtube.com	Ustadz AB: Any law aside from Allah's laws are jahiliyyah laws. Jahiliyyah law is a law prepared by humankind individually or collectively.	Laws formulated by other than Allah
Youtube.com	Ustadz FA: <i>Jāhiliyyah</i> : taking tradition a source of creed	Tradition as a source of creed

The table shows three meanings of *jāhiliyyah*: firstly, law aside from the Quran and hadith. AB and BA stated that the so-called *jāhiliyyah* is the law with no cornerstone from Qur'an and hadith. The preacher exemplifies wealth acquired during a marriage – adopted from marriage law. To both preachers, this type of wealth belongs to the husband, and there is no rule mentioning this possession has to be shared. Secondly, laws passed by others other than Allah are *jāhiliyyah* laws. JS and AB's brief statement with no exceptions denies regulation needed due to the absence of law directly and originally from al-Qur'an and hadith. Thirdly, *jāhiliyyah* is connected to tradition as the source of law on the creed. FA said that making tradition a source of the doctrine was *jāhiliyyah*.

Most ulama during the interview interpreted *jāhiliyyah* contextually, employing three viewpoints: linguistic, historical, and norms or values. The ulama agreed that *jāhiliyyah* linguistically means ignorance. Marzuqi Mustamar said, "Linguistically, *jāhiliyyah* means 'foolish'." Historically *jāhiliyyah* refers to the era before Islam's arrival, as the people had not recognized the absolute truth based on revelation. Head of Islamic Boarding School Sabiitul Rosyad Marzuqi Mustamar said:

Therefore, the era before Islam was named *jāhiliyyah*. However, culturally, literature, in particular, had been well-developed, as shown

by the poetry-writing-contest winner who deserved to hang their poem on the Ka'bah – later known as *ta'liqāt*. Economically, they have also made excellent market development, including *Ukādh* and *Dhū al-Majāz* (Mustamar, personal communication, 2021).

A prominent Indonesian *mufassir* (expert in Quranic exegesis) M. Quraish Shihab (2002, 89), once said:

Jahiliyah means foolish. Yet, not everyone is stupid. They could be smart, even a professor, but insular and follow their own will. Do they take and follow the provision of the insular?

From this point of view, Miftachul Akhyar, head of the Grand Committee of Nahdlatul Ulama (PBNU), said that *jāhiliyyah* law meant *radd al-ḥaq* (denying the truth) (Akhyar, personal communication, 6 July 2021). Chamzawi, an academic and ulama living in Malang, East Java, said, "*Jāhiliyyah* law means judging as one's will with no reference from knowledge nor justice" (Chamzawi, personal communication, 2021). Another informant, Mohammad Bashri Asy'ary quoted several *mufassirs* such as Sheikh Sa'di (Saudi Arabia), Sheikh Thanthawi, al-Baghawi, al-Qurthubi, Sayyid Quthub. They say that the law of *jāhiliyyah* means replacing the law of God with human law, which is considered better than God's law. Those who do not judge Allah's laws may fall into unbelievers, despots, or fasiqs, and those who deny Allah's laws do not belong to the believers (Asy'ary, personal communication, 20 July 2021).

Shihab, in his work *Tafsir al-Misbah*, explained:

Do they, the violators of commands and prohibitions of Allah, want to judge with unjust *jāhiliyyah* law, even lust-dominated, and take tendency and pretence principles of law? This is the *jāhiliyyah* people's way. For those who believe in sharia and follow the truth, Is there a better law than Allah's law? They are the ones who understand Allah's laws (Shihab, 2012: 35).

Marzuki Mustamar, a head of the Sabiilul Rosyad Islamic Boarding School and Chair of the East Java Nahdlatul Ulama Regional Board of Tanfidziyah Board (PWNU), defines ignorance as a law that is built based on human thoughts and desires as practised by people before Islam came. He emphasized that: "The absence of laws explicitly written in the Al-Qur'an or Sunnah are not necessarily called *jāhiliyyah* for whether or not a law is *jāhiliyyah* should refer to the above definition, namely any law built under human's thoughts and lust" (Mustamar, personal communication, 15 July 2021)

*Jāhiliyyah* historically means the period of pre-Islam Mecca. Philip K. Hitti said that pre-Islam Meccan people were people with no dispensation, no inspired prophet and no revealed guiding book (Hitti, 1974: 87).

The importance of discussing the outlook of ulama in Indonesia is closely related to the inevitability of Islamic law renewal. The renewal of Islamic law (*fiqh*) should bring it closer to the Indonesian characters. Muslim experts agree that there is possible to adopt customs or Indonesian values as a law-building sources. Reformulating Islamic legal thoughts is inevitable due to Islamic law's flexibility, adaptability, and applicability. The ulama refer to *maqāṣid al-sharī'ah* or public welfare (al-Shātībī, 2009: 305). The present study focuses more on the text to discuss the engagement between Islamic and customary law in Indonesia. This is to synthesize Islamic and customary law to answer contemporary problems.

However, how and what criteria, based on the Quran and Sunnah, to identify *jāhiliyyah*? Referring to above explanation, all informants agreed that laws formulated based on the Qur'an and *sunnah*, *ijmā'*, *qiyās*, *maṣlahah 'āmmah*, justice, and *maqāṣid al-sharī'ah*, in general, cannot be categorized *jāhiliyyah* law. Thus, a law provision adopting custom/ local values is the area of *ijtihād* which can only be performed when it is within *ḥanūfiyyat al-dilālat* (unclear laws) through proper procedure. In this situation, the discrepancy is very likely to occur. The difference can be about details of the law, which is *furu'iyāt* in nature.

The informants also agreed that the concept of Islam *kāffah* to Muslims is a must, although the application may be different as an implication of *qaṭ'i-zannī* (definitive and indefinite concept). A concrete description of Islam *kāffah* is very unlikely monolithic except for teaching provision under *qaṭ'i nash*. The notion of comprehensive Islam is closely related to the various interpretations of the Quran and Sunnah, the source of Islamic teachings. Those interpretations cannot be separated from the concept of *qaṭ'i-zannī* in *uṣūl al-fiqh*.

Legal provision in *qaṭ'i* verses requires Muslim to perform in their totality according to *uṣūl al-fiqh* principle: "No *ijtihād* against *qaṭ'i nash*. The absence of *ijtihād* opportunity can cause legal rigor (Sulastomo, 1995: 273). That strict understanding will tend to accuse those of different understanding need correction. Regarding *zannī* proposition, *fiqh* experts work to reach a legal conclusion; yet the conclusion will



also be *zannī*. Ibn al-Qayyim wisely said: "The change of law occurs due to changes of time, place, situation, and tradition." (al-Qayyim, n.d.: 14). The statement does not mean the law will change without considering norms written in Islamic legal primary sources (the Quran and Sunnah). The changes from the *ijtihād* process must remain in the same corridor of *naṣ* (*fī ḥudūd tafahhum al-naṣ*) (Khallāf, n.d.: 11).

The spirit of implementing *kāffah* Islam by practising the provisions (Mandhūr, n.d.:140) in sharia and fiqh can differ from one to another (Abdul Aziz Dahlan & et. al., 1986:571; Muslehuddin, 1980:17). Sharia's dimension is *thubūt*; meaning universal and unifying. It gets the primary attention in the activities of Muslims all over the world (Shiddieqy, 1993:77). On the other hand, fiqh's dimension is *tahayyur*, a product of humans' thought in their attempt to understand sharia (*ijtihād*) called fiqh (Syarifuddin, 1990:18; Damsyik, 2013:223–240). The second dimension makes the application of law different from one area to another due to *ijtima'* (ulamas' agreement) (Aziz, n.d.: 22–23).

Islamic law has a specific character that makes it different (Sodiqin, 2021). The implementation of Islam *kāffah* is measured when Islamic values are inherent in life on earth as the *maqāsid al-sharī'ah al-khamsah*. This is known as the five sharia objectives: 1) *ḥifẓ al-dīn* (faith protection), 2) *ḥifẓ al-naḥs* (self protection), 3) *ḥifẓ al-'aql* (mind protection), 4) *ḥifẓ al-naṣl* (offspring protection), 5) *ḥifẓ al-māl* (wealth protection). This understanding will lead to *tasāmuh* (tolerant) and *tawassuṭ* (moderate). The attitude implies the absence of extreme or fundamental movements with which different faith and understanding are accused of being perverted.

## Toward Islamic Law Adoption of Customary Law

The attempt to renew Islamic law in Indonesia under the jargon of 'returning to the Quran and Hadith' tends to use textual interpretation. The aim is to bring religious life back to a pristine state. It can be understood that pristine-oriented movements are occasionally named 'purification' movements. Khalid Basalamah, for example, said: "Matters unpracticed by the Prophet and his companions are *bid'ah* (innovation)" (Youtube.com). Muhammad Ibrahim said: "Practicing Allah and Rosulullah's law is *aṣlu al-īmān*. Denying *ahlu al-īmān* means removing Iman. Beware!"(youtube.com).

Without further explanation, this textual interpretation leads to a situation in which laws adapted from local wisdom underived from the Quran nor hadith are *jāhiliyyah* laws. Another implication mentioned by Miftachul Akhyar: "If one interprets *jāhiliyyah* law textually without considering different outlooks, they will be trapped into a radical group, and easily accuse others as *ahl al-bid'ah*, *ahl al-shirk*, unbeliever, and so forth, because of incorrect understanding and application" (Akhyar, personal communication, 6 July 2021)

Points C and D in the above data show that the *jāhiliyyah* law term refuses local elements unscripted in the Qur'an and hadith is a misinterpretation and practice. A faulty message interpretation does not occur because of different interpretations between the message sender and receivers. Still, it also happens because of a different culture that affects knowledge and ideology (Sprenger 2016). Sprenger (2016) further said faulty interpretation occurs because of one-way communication. The inappropriate use of the *jāhiliyyah* law term is actually because of an inappropriate analogy. In other words, *jāhiliyyah* law can refer to laws that do not have basis in the Quran hadith.

The presence of customary law/ Indonesian values is theoretically called *al-'urf* and *al-'ādah*, which means any utterance or action that has been becoming a habit of a society (Syawqiy, 1989, p. 172; al-Fadani, 1996:267). The term *al-'urf* is in Q.S. al-A'rāf:[7]:199. Customary law enforcement does not necessarily be in the form of agreement; social contact does, too (Hamid, 1403:319; Shalabi, 1986: 313). Thus, customary law is neutral and emerges from the social process. Ulama classify customary laws into correct laws (*ṣahīḥ*) and incorrect ones (*fāsid*). Naṣ, in the Qur'an and sunnah offers *qaṭ'i al-dilālāt* (definite theorem) and *ẓannī al-dilālāt* (undefinite theorem) (Kamali, 1991: 70). The consequence is that contrary to *ẓannī naṣ*, custom is acceptable as long as it goes with the objective of sharia (*maqāṣid al-shari'ah*) and *qaṭ'i* provision. Similar matter occurs in halal and haram. Halal materials to some ulama could be haram due to different '*illah*.

From this point of view, there are two types of customs. First, general custom (*al-'urf al-'amm*) represents daily practises in some place at some given time. Second, special custom (*al-'urf al-khās*) refers to daily practice in a certain place (Nujayn, 1993: 93). Then, customary law serves as a secondary source from which solution is taken in the

absence of primary sources. It puts custom as a marginal source of law. As Joseph Schacht stated:

As a point of historical fact, custom contributed a great deal to the formation of Islamic law, but the classical theory of Islamic law was concerned not with its historical development but with the systematic foundation of the law, and the consensus of the scholars denied conscious recognition to custom (Nujayn, 1993: 62)

For example, pre-Islam traditions adopted and legalized by Islam are circumcision, initiated by the prophet Ibrahim (Nujayn, 1993: 4), buying-and-selling, and order transactions (al-Bukhārī, n.d.: 111). Islam keeps polygamy under certain requirements but effaces polyandry as it obscures line of descent; 'Umar ibn al-Khattāb (W. 23 H./644 AD) founded a council system to suit Persian tradition (al-Mawārdī, n.d., p.199). Abu Hanifah (81 H./700 AD - 150 H./767 AD) included customary law in *istihsān* foundation. He even preferred customary law to *qiyās* if clear *naş* was unavailable. Malik ibn Anaş (94 H. /714 AD – 179 H. / 795 AD) paid great attention to customary law, especially of Madinah inhabitance, and made it better in *maşlahah* and *mursalāh* concepts. Al-Shāfi'i (150 H./767 AD - 204 H./819 AD) once altered his opinion from *qawl qadīm* in Baghdad into *qawl jadīd* in Egypt since the two regions had different customs. To Ahmad ibn Hambal (164 H./780 AD - 241 H./855 AD), weak hadith (*ḡa'īf*) is acceptable if it agrees with local custom.

Islam does not replace existing laws with anything else. Instead, selectively adopts and improve them. With Indonesian Muslim intellectuals' acceptance of customary law/ local values, the Islamic law (fiqh) with Indonesian character will come to reality (Madjid, 1991: 66). If a *jāhiliyyah* law is followed entirely, Islam in Indonesia will be full of Arabian-like.

There will always be Islamic laws if used as modern laws (Masduki & Et.all, 1998: 225). The first step is to open the door of *ijtihād* and *tajdīd* while maintaining the *istinbāt* method that earlier ulama have applied. The assumption is that Islamic law can selectively accept customary and western laws, that the materials cover all aspects of life, and that nature is flexible. When that kind of consciousness becomes mainstream for the Muslim community, it is not impossible that Indonesia can bear one united law with Islamic law as a source

without neglecting customary law and, simultaneously, accommodative toward western law. The idea is aimed to apply Islamic law to Indonesian characters (Nawawi, 2007: 29–43). Retaining local customs will encourage Muslim to be involved in the modern world while firmly grabbing the adage: *al-muḥāfazah bi al-qadīm al-ṣāliḥ wa al-akhdh bi al-jadīd al-aṣlah*, keeping earlier good values and taking new better values (Zahid, 2019: 57–68). This is what the so-called *ijma'* with producing law out of agreement from *mujtahid* (al-Zuhaylī, 1986: 429).

The majority of the informants affirmed that customary law/local values could be a source of law according to *al-‘ādah muḥakkamah* principle and *al-‘urf* concept, although with some notes: 1) customary law/local values can be a source of law when it is not contrary to sharia, 2) adopting traditional law/local values is done by considering *maṣlahat* dan *maqāṣid al-shari'ah al-‘āmmah*, and 3) to realize rule's effectiveness from customary law/local values, agreement from Islam figures must be taken into account.

From the above discussion, although customary law/local values can be a source of law in Indonesia, the source of law hierarchy has to be precise. Informants suggested the national source of law as follows: religious values, ethical and moral values, and customary values. In this context, the basic principles in Pancasila have reflected the hierarchy: *siyāsah*, *tahayyur*, *taṭbīq* (new phenomenon law application), and *tajdīd* doctrines (renewal) (Coulson, 1994: 189).

The solutions proposed by the informants to create Indonesian-nuanced Islamic law should begin with a certainty of the national source of law hierarchy in line with sharia, religious value, ethical and moral value, and cultural value. The enforcement must obey *tadrijiyyan* (step-by-step) principle. In this context, the basic principles in Pancasila have reflected the hierarchy. Thus, a serious study must be conducted to evaluate whether customary law provision has met the principles or requirements to be adopted in a law formula, particularly laws passed by the state. (Susylawati, 2013:124–140).

### **Ulama's Reception of Local Wisdom in Indonesian-Nuanced Islamic Law**

According to the *ulamas*, law provisions cannot necessarily be called *jāhiliyyah*. Chamzawi said: "earlier *ulamas* also adopted customary

law/ local values when formulating law provision, and later *al-‘ādah muḥakkamah* or *al-‘urf* principles that can be the foundation of the law were set (Chamzawi, personal communication, 2021).

Marzuqi Mustamar stated, "law inexplicitly managed in the al-Qur'an and hadith should refer to ulama's agreement (*ijmā'*) and analogy (*qiyās*). In the absence of both references, *maṣlaḥah* consideration can be used." Besides *ijtima'* and *qiyas*, he also said: "the definition to be called Islamic law, from the law source point of view, is *maṣlaḥah āmmah* (suitable for all) consideration. From the explanation, Mustamar judged that it could not be called jahiliyyah law when it has chapter-and-verse *ijmā'*, *qiyās*, or *maṣlaḥah āmmah*. Miftachul Akhyar, the head of 'Am Board of Nahdlatul Ulama, agreed that traditional law/ local values could be a source of law adopted in various law formulas in Indonesia. He explained:

In the era of The Prophet PBUH many traditions were retained, adjusted and strengthened unless they had already been awful. Let alone containing *al-‘ādah muḥakkamah* principle. When a tradition leads to good, obedience, and benefit, why cannot let they be? The rule for wealth acquired during a marriage is also acceptable if it meets *'an tarāḍin* principle. Also, a must-will for it is practised in Egypt (Akhyar, personal communication, 6 July 2021).

Ulama's viewpoints and other academics agreed with that definition. For example, Sahiron Syamsuddin, an expert in Quranic exegesis from State Islamic University Sunan Kalijaga Yogyakarta, said: "Jahiliyah law is a law that is contrary to Islamic values, covering humanity and justice. Laws explicitly managed in the Quran and hadith are not *jāhiliyyah* at once. Yet, they can be Islamic when they agree with Islamic principles, which do not contradict. Something is Islamic if it explicitly appears in the Quran and hadith, and or is provided implicitly according to certain *ijtihad*" (Syamsudin, personal communication, 4 May 2021).

Thus, integration between Islamic and national or customary law cannot be called jahiliyyah law. The solution proposed by informants to bring the unity of national law is the certainty of the national source of law hierarchy in line with sharia. The hierarchy should be as follow: first, religious values. Second, ethical and moral values. Third, custom value. In this context, the basic principles in Pancasila already reflect a hierarchy. Among other things, the enforcement of sharia provisions must follow the *tadrijjiyyan* principle (step by step). Serious studies

must also be conducted to evaluate whether customary law provisions meet the principles or requirements so that they can be adopted in a legal formula, especially laws passed by the state.

Addressing the importance of the hierarchy of source of law formation, Ahmad Muhtadi Anshor, an academic and ulama living in Tulungagung, stated as follow:

Indonesia is an excellent country consisting of many tribes, ethnic and religions. Each tribe and ethnicity has its own rules and traditions. The on-going regulations can and should be adopted as a national source of law as long as they align with the nation's principles. Law development in Indonesia is linked to local wisdom. So, it allows the development of law in Indonesia. Local wisdom should be considered when it does not contradict Islamic law and should see its advantages and disadvantages (Anshor, personal communication, 21 July 2020).

Chamzawi proposed that in order to develop the law in Indonesia, customary law should be promoted as a source of law in NKRI. He added: "Customary law can be taken as a source of Islamic law as long as it is not contrary to sharia. Istinbath method, like *maṣlaḥah mursalah* method can be used as legal standing in the absence of nash from the Quran and hadith, *ijmā'* and *qiyās* as long as beneficial, like setting minimum age in marriage" (Chamzawi, personal communication, 14 July 2021). Meanwhile, Marzuqi Mustamar proposed:

In my opinion, it is necessary to agree on our national source of law hierarchy, such as, first, religious values. Second, ethical and moral values. Third, custom value. In this context, the basic principles in Pancasila have reflected the hierarchy (Mustamar, personal communication, 15 July 2021).

In connection with law implementation, it should be done gradually. Miftachul Akhyar, Rais 'Am, the General Committee of Nahdlatul Ulama (PBNU) explained:

In terms of *taṭbīq al-sharī'ah*, there are 2 mdzhab: *mu'ajjalan* (urgent) and *tadrijiyyan* (gradual)." During the reign of Umar bin Abd Aziz, his son Abdul Malik urged him to enact sharia as a whole. Khalifah Umar bin Abd. Aziz replied: "If I did what you asked, my son, I am in power for another 50 years, that would *bid'ah* far greater than that of *khalifah* Ali bin Abi Thalib (Akhyar, personal communication, 6 July 2021).

Hence, a comprehensive study of the *jāhiliyyah* term is essential to reformulate the term without stepping too far against the text of

the Quran and hadith. The word *jāhiliyyah* is used by most people in social media and religious stages. It is also used haphazardly regardless of how generations after the prophet and his companions reformed Islamic law through fiqh and *uṣūl al-fiqh*. This concept makes *urf* and *maṣlahah mursalah* the basis for adjusting local culture or customs in establishing Islamic laws and regulations. For example, how were Islamic marital law and local customs adapted and merged?

## Conclusion

The study concludes that *jāhiliyyah* law, according to several Indonesian Muslim figures, is a law contradicts with a provision in the Quran and Sunnah. The law adopted from local values and formatted through ijtihad with procedure conducted within *ẓanniyyat al-dilālāt* (vague proposition). Furthermore, there is a chance to adopt customary law or local values as a source of law according to *al-‘ādah muḥakkamah* principle and concept of *al-urf*. However, the adoption must consider sharia and *maqāsid al-sharī‘ah ‘āmmah*.

The discussion proposes three recommendations: first, the term *jāhiliyyah* law is an irrelevant term employed to reject laws not derived from the Quran and hadith. Second, there is a need to accommodate local customs to reconstruct Islamic law, particularly in Indonesia. Third, the importance of national consensus on the hierarchy of national legal sources to avoid dualism of law and bind all citizens.

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