Sharia and Politics in the Context of Globalization and Society 5.0

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Abstrak: Artikel ini bertujuan untuk mendeskripsikan dan menganalisis globalisasi dan dampaknya terhadap politik Islam dan hukum Islam (*syariah*) di era modern. Globalisasi telah membawa seperangkat etika dan norma baru dalam hubungan manusia yang dalam beberapa hal menyebabkan perubahan pandangan dunia serta sistem sosial, ekonomi, dan politik di dunia. Sebagian besar ulama dan intelektual Muslim menerimanya, termasuk pengaruh peradaban Barat, dengan penyesuaian tertentu yang mengacu pada ajaran Islam dan identitas bangsa. Di sebagian besar negara Muslim, globalisasi telah mempengaruhi perubahan sistem negara, seperti *nation-state*, demokrasi, dan perlindungan hak asasi manusia. Selain itu, globalisasi telah mempengaruhi status hukum Islam, terutama dalam bentuk sekularisasi hukum nasional, meskipun kemudian direvisi dengan upaya Islamisasi hukum nasional. Globalisasi juga berdampak pada kebutuhan untuk menafsirkan kembali beberapa ketentuan hukum Islam yang tidak sejalan dengan perspektif dan tantangan modern, terutama ketentuan yang terkait dengan masyarakat 5.0, seperti legitimasi transaksi digital, hubungan damai antara Muslim dan non-Muslim, dan pemahaman tentang jihad defensif.

Kata kunci: globalisasi; politik Islam; hukum Islam

Abstract: This article aims to describe and analyze globalization and its impact on Islamic politics and Islamic law (sharia) in the modern era. Globalization has brought about a new set of ethics and norms in human relations which in some ways have led to changes in worldviews as well as social, economic and political systems in the world. Most Muslim scholars accept it, including the influence of Western civilization, with certain adjustments that refer to Islamic teachings and national identity. In most Muslim countries, globalization has affected changes in state systems, such as nation-state, democracy, and protection of human rights. In addition, globalization has affected the status of Islamic law, especially in the form of secularization of national law, although this was later revised with efforts of Islamization of national law. Globalization also has an impact on the need to reinterpret several provisions of Islamic law that are not in line with modern perspectives and challenges, especially provisions related to society 5.0, such as legitimizing digital transactions, peaceful relations between Muslims and non-Muslims, and the understanding of defensive jihad.

Keywords: globalization; Islamic politics; Islamic law

Introduction

Islam is a religion that contains the teachings of religion and the state, and does not adhere to the separation between the two. This is evidenced by the fact that Muhammad (570-632) was not only a prophet, but also a head-of-state, a judge, and a military commander. Four Rightly Guided Caliphs (*al-Khulafā' al-Rāshidūn*) were also religious leaders and state leaders. This situation lasted until the end of the Ottoman Turks in 1924, although since after the *al-Khulafā' al-Rāshidūn* era, the integration of religion and state has not fully occurred. In Islamic history, Islamic doctrines mostly have been practiced in personal, social, and political life since the Prophet period until the arrival of European colonialism. Islamic law (sharia) had once become a positive law in Islamic caliphates, sultanates, and kingdoms. Islamic law even had an influence on European law as a result of interactions and exchanges between them over the centuries around the Mediterranean. For example, trade as well as administrative and tax terms—including "tariff," "customs office," and "mayor"—are part of a much broader Euro-American vocabulary borrowed from Arabo-Persian Muslim sources (Weler & Emon, 2021).

The arrival of European colonialism to the most Muslim countries seized power and property in most Muslim countries or kingdoms, so that the colonized Muslim countries had no independent authority in political and economic life. It also brought about reducing the existence of Islamic law among its adherents by introducing their legal system instead of Islamic legal system. This means that the beginning of colonization in 16th century is the starting point of the pre-modern globalization in the Muslim world, while modern globalization began in the 19th century which was marked by the production of cheap household goods as a result of industrialization and the rapid population growth that created demand for commodities.

The end of colonialism in the Muslim countries after the World War II in 1945 did not make most Muslim governments fully support the application of Islamic politics and sharia as national system. This is not merely because of the absence of government political will, but because of the influence of Western political and legal system on Muslim governments as the impact of colonialism and globalization. The influence of Western civilization has become stronger because

of the existence of rapid globalization since 1970s when the internet was discovered, which led to the emergence of society 4.0. Most governments in the Muslim countries characterize their political systems as democratic or are moving toward democratization that protects human rights. In line with this, globalization produces rapid spread of sciences as well as dynamics and social changes that require reinterpretation of sharia.

These phenomena raise questions of how Muslim scholars respond to the globalization and what its implications for Islamic politics and sharia (Islamic law) are. In line with these problems, this article aims to describe and analyze globalization according to Muslim scholars. In addition, it aims to describe and analyze the impact of globalization on a new understanding of the state from an Islamic political perspective as well as a new understanding and implementation of Islamic law in the modern era. With this aim, this research method is a description and analysis of Islamic politics and Islamic law in the context of globalization both normatively and empirically using legal and political science approaches.

Globalization in Islamic Perspective

The Human Development Report 1999 described globalization as: "increasing the contacts between people across national boundaries in economy, in technology, in culture and in governance. It is also fragmenting production processes, labor markets, political entities and societies" (Gidden, 1990; UNDP, 1993) . It is now becoming an unavoidable process that occurs in all countries in the world, mainly because of the existence of global interdependence and exchange among them. The substance of globalization has started since the 15th century or even earlier, which can be seen in the spread of world religions and ideologies to all countries and the process of mutual influence between civilizations and cultures. In contrast to the past, where the dissemination process took a very long time, nowadays, especially since 1970s, the process of globalization is running rapidly in all countries in the world, mainly supported by the existence of internet and other information technology as well as modern transportation. This era is called the information age or digital society (society 4.0).

This brought about new set of ethics and norms of human relations which in some respects led to changes of worldviews as well as social, economic, and political system in the world. This condition then produced what so called "homogenization" which means increasing similarity between and among different societies of the world and "hegemonization" which means the paradoxical concentration of power in a particular country or in a particular civilization (Mazrui, 1998). In this case, the Western civilization today dominates the processes of "homogenization" and "hegemonization" culturally, economically, and politically. The Western civilization, especially the United States of America, has influenced political, economic, and social systems of non-Western countries. This has resulted in the dominance of Western hegemony, which has implications for the assumption or claim of some Western societies, that their civilization is the highest, so that other civilizations must follow Western civilization.

In the process of globalization, some Western ideas and systems have influenced Muslim political, economic, and social systems, as evidenced by the existing secularization process taking place in almost all Muslim countries. There are several examples of the influence of Western civilization on Muslim countries, particularly democracy and the protection of human rights as well as sciences and technologies. Certain Western ideas and systems that are objective or neutral are acceptable to non-Western civilizations. Yet there are certain liberal concepts or ideas that are unacceptable to by other civilizations, especially Islamic civilization. As regard to the protection of human right, for example, the West has pushed the world to recognize and to protect the practice of lesbian, gay, bisexual, and transgender (LGBT), even though this has violated social values that exist in certain countries, especially Muslim countries. Besides, the West encourages the concept of religious freedom to conform to a liberal perspective, including the freedom to insult or defame a particular religion whereas it is considered a crime in Muslim countries and many other countries.

Some observers consider that globalization is a kind of Westernization or Americanization, so it is understandable that some non-Western societies reject globalization. In this regard, there are three responses of Muslim scholars to globalization. Firstly, those who reject globalization, because it is the highest stage of imperialism, hegemony, and cultural

invasion, destroying heritage, authenticity, belief, and national identity, as well as specific cultural values. Secondly, those who fully support globalization as an era of modern science, advanced technology, global communication, and knowledge-based information. According to them, it is no longer possible for people to be confined within their own limits and reflect on their heritage and reminisce into the past. Thirdly, those who accept globalization which is in line with national interests and Islamic teachings. Nevertheless, they criticize or reject globalization which is unfair and threatens Islamic social values and cultural identity (Najjar, 2005).

The first response was expressed by Islamists or "Muslim fundamentalists", the second response is expressed by secular Muslims, while the third response is expressed by moderate Muslims. The majority of Muslim scholars and intellectuals are moderate. They accept globalization with certain adjustments to Islamic teachings as philosophy, values, and national identity. In the political field, for example, Muslim countries that adhere to democracy generally do not necessarily base their state philosophy on secularism, but still give religion a high position in the life of society and state. Even in Turkey as a secular state, which explicitly mentions secularism in its constitution, the position of religion is not entirely the same as the position of religion in secular Western countries.

In the perspective of Islamic teachings, globalization is a process that cannot be denied as it is in line with Q.S. al-Ḥujurāt: 13, which states that Allah created human beings in various nations and tribes to know each other. This verse indicates that Islam recognizes globalization, namely that people in the world with various ethnic, racial, and national backgrounds are required to establish relationships and to communicate each other. This implies that they are encouraged to practice mutual understanding, mutual respect, mutual help, and cooperation, as well as dialogue and communication by promoting brotherhood, equality, loyalty, and peace; there is no domination or hegemony of certain country or civilization over others (Alwan, n.d.).

Basically, the majority of Muslim scholars more accept Western civilization in the field of science and technology rather than culture and politics, because the former is more objective and rational. Only in certain cases there are debates about technologies that are harmful to

human life, such as nuclear technology, biological or chemical weapons, and so on. They also accept political and economic system that does not conflict with Islamic teachings, such as constitutionalism and democracy. Moreover, they can accept certain Western cultures which are basically neutral, such as fashion, food, and fun (entertainment), which are adapted to Islamic values. In general, Muslims will continue to practice their religious teachings while adopting new values and cultures that suit them. Of course, there are universal values adopted by Islamic and Western civilizations, such as peace, justice, equality, tolerance, and others. Muslims can accept the universal values and positive aspects of the Western system while preserving and developing certain values and systems derived from Islamic teachings and traditions.

The process of globalization implies dynamic interactions and relationship among various nations in the world, and this will lead to stronger cooperation or conflict among them. In certain cases, globalization can create "tension" between them, especially if certain civilizations or cultures are forced to dominate others. The theory of "clash of civilizations" introduced by Samuel Huntington is based on this fact as well as interpretation of human history (Huntington, 1996), although many scientists and religious leaders have criticized this theory and consider it as a misunderstanding of facts and history.

Conflicts between countries or between nations are in many cases caused by various factors, but it cannot be denied that in certain cases, differences of civilization and culture have contributed to the conflicts. Conflicts in the Middle East which have lasted for seventy years, for example, is mostly caused by political and economic factors but to some extent by religious factors. The United Nations (UN) has a role in maintaining peace and security in the world and resolving conflict by peaceful means,[1] but in many cases, the UN cannot do anything to deal with countries that violate international law, especially regarding conflicts and wars. Unfortunately, when most people in the world are struggling for democracy and human rights, which means struggling for equality among people and nations, ironically the UN still practices inequality in its organizational structure. The UN Security Council, whose permanent members are five countries, has an absolute veto power over all substantive actions of the council (Krieger, 1993).

Generally, non-Western countries and many Western leaders not only need enforcement of international law but also want to realize a global ethics, which is developed from the contribution of the existing civilizations in the world. It should be based on mutual understanding, mutual respect, interdependence, and cooperation. The global ethics has been formulated and declared by the Parliament of the World's Religions in 1993 in Chicago entitled: *Towards a Global Ethics: An Initial Declaration* (Parliamentofreligions.Org/Global-Ethic/towards-a-Global-Ethic-an-Initial-Declaration). This global ethics emphasizes aspects of not only human rights, but also human obligations or responsibilities. Nevertheless, many governments in the world prefer to show their selfishness in maintaining their power or expanding their influence over other countries rather than having to practice law and ethics.

Impact to Islamic Politics

As mentioned above, the arrival of European colonialism to many Muslim countries demeaned humanity as well as seized power and property in most Muslim kingdoms and sultanates. The Europeans introduced their political system and enforced their legal system in Muslim colonialized countries based on secularism. This condition encouraged Muslim people and governments to fight against colonial rulers as part of jihad. The colonialism ended mostly with the end of the World War II in 1945, partly because of the war of independence and partly because of granting of independence by the colonial rulers.

The process of globalization that went hand in hand with colonialization and modernization changed political systems in most Muslim countries, be it the caliphate, sultanate, or kingdom. In some cases, the political reform was initiated by Muslim leaders themselves, which is intended to develop a modern and a democratic political system as well as to protect human rights. Since the end of the World War II, there have been political reforms in the Muslim countries, which can generally be classified into three forms, namely: (1) traditional monarchy, (2) constitutional monarchy, and (3) republic. Most Muslim countries have adopted certain Western political system, especially nation-state, constitutionalism, and democracy. Some of them even adhere to secularism, which means separation of state and religion, such as Turkey, Azerbaijan, and Tajikistan.

Nation-State and Constitutionalism

Sharia contains political ideas in the form of general principles stipulated in the Qur'an and Sunnah, such as mutual consultation (*shūrā*), pluralism (*ta'addudiyyah*), equality (*musāwah*), trust (*amānah*), justice (*'adālah*), brotherhood (*ukhuwwah*), peace (*silm*), and control (*amr ma'rūf nahy munkar*). There are no definite injunctions regarding the form of the state system or institution. Hence, there are various political thought or *ijtihād* of ulama on political system that is proper to their situation and condition, such as caliphate, kingdom, or republic system. This also means that there are varieties and even differences in ideas and practices between political systems in the classical and contemporary periods due to different condition.

The major theme of political theory in the classical and medieval periods was the concept of *khilāfah* (caliphate), although some ulama, such as Ibn Jama'ah and Ibn Taimiyyah, did not support this institution (Lambton, 1991). The word "*khalīfah*", which was originally given to Abu Bakr as the first caliph, comes from the word "*khalīfat al-Rasūl*" which means the successor of the Prophet in guarding religion and managing worldly affairs. The term "*khalīfah*" was then used for the successors during the periods of *al-Khulafā' al-Rāshidūn*, then continued its use from the Umayyad Dynasty in 661 until the end of Ottoman Dynasty in 1924. Because of the strength of this usage, the term "*khalīfah*", which originally meant successor, was later given a new meaning as head of state, while "*khilāfah*" was given a new meaning as a caliphate system. The caliphate system is universal, which means that Islamic caliphate has no national boundaries of state as well as certain races, ethnicities or social group (Moten, 1996).

The caliphate system is not based on definite (*qat'ī*) and clear (*ṣarīh*) arguments (*dalīl*), but it is the result of the *ijtihād* of the *ulama*s based on *maṣlaḥah* (benefit), which is a major theory in Islamic political thought (*fiqh al-siyāsah*) (Pulungan, 1994; Aba Namy, 1993). In the Islamic perspective, the state can take the form of a caliphate or a nation-state, kingdom or republic, but the important thing is that the state implements the Islamic ethical and moral principles as well as legal norms (shariah) as mentioned above. The state or organization in the state is only a means to implement and enforce the principles of moral, ethics, and norms, which are selected based

on the principle of general welfare (*maṣlaḥah*). Hence, in line with the globalization that went hand and hand with colonialization and modernization, most Muslim countries then applied the concept of nation-state. The emergence of this concept in the 17th C changed the form of state and international relations, especially after the Peace of Westphalia in 1648, which recognized the right of the state to govern its territoryy without external interference. It also changed the principle of national sovereignty, which recognizes the right of national communities to govern themselves. The nation-state is defined as "a territorially bounded sovereign polity—i.e., a state—that is ruled in the name of a community of citizens who identify themselves as a nation" (https://www.britannica.com/opic/nation-state).Today the majority of ulama accept the concept of nation-state originating from the West as a substitute for the concept of caliphate. This concept actually does not conflict with Islamic teachings, because Q.S. al-Ḥujurāt:: 13 says: "O mankind, indeed We created you from a male and a female and made you into nations and tribes so that you may know one another. Verily, Allah is All-Knowing, All-Knowing." This verse shows that the grouping of people into tribes and nationalities is the *sunnat al-Allāh* (Allah's way or natural law), which cannot be changed. The nation-state system is only a formalization of this verse which was developed in modern era.

Thus, the majority of ulama and Muslim intellectuals can selectively accept the adoption of other systems outside of Islam that do not conflict with Islamic teachings. Only a small number of ulama and Islamic groups do not allow the adoption of other systems outside of Islam, such as *Ḥizb al-Taḥrīr*, radical Salafists, and radical Islamists or radical *al-Ikhwān al-Muslimūn*. Certainly, the *al-salaf al-sāliḥ* (early Muslim generation) did not reject the adoption of other systems. Caliph Umar ibn al-Khattab, for example, adopted the system of government administration from the Persian Empire, and adopted *bayt al-māl* system (state finance office) from the Byzantine Empire (Pulungan, 1994). In the field of faith (*'aqīdah*) and worship (*'ibādah*), such adoption is indeed not allowed, but in other fields the adoption is allowed if it contains *maṣlaḥah* (benefit) for the people and does not conflict with Islamic teachings.

Regarding the concept of constitutionalism, although Islam legitimizes the need for a constitution as the basic rule of the state as

practiced by the prophet in the form of the "Medina Constitution", in fact, most Muslim countries enacted their constitutions just after they achieved independence at the end of the World War II, and some of them have not enacted constitution until present. Saudi Arabia, for example, had no constitution known in the modern concept until the early 1990s. However, in 1992 there was legal reform in this country with the enactment of the Basic Regulations (*al-Niẓām al-Asāsī li al-Ḥukm*), the formation of the Consultative Assembly (*Majlis al-Shūrā*) and the Regional Administration System (*Niẓām al-Muqāṭaʿāt al-Idāriyyah*). The *al-Niẓām al-Asāsi* can function as a written constitution (*dustūr*), which the Saudi people themselves forbid to use this word, because their constitution is the Quran and the Sunnah (Aba-Namay, 1993). The term "*al-Niẓām al-Asāsī*" was also used by the Sultanate of Oman for its first constitution enacted in 1996.

Muslim countries have adapted their constitutions to Islamic principles, and hence, most of the constitutions in Muslim countries stipulate the position of Islam and shariah in the state, but they prefer to promote popular sovereignty (*siyādat al-sha'b*) rather than sovereignty of God. In this regard, Muslim countries today can be classified into six groups, namely: first, those that stipulate that Islam is the state religion, the head of state should be Muslim, and the shariah is national law, such as Saudi Arabia, Iran, Pakistan, and Libya; second, those that stipulate that Islam is the state religion, the head of state should be Muslim, and the shariah is the main source of legislation, such as Syria and Sudan; third, those that stipulate that Islam is the state religion, and the shariah is the main source of legislation, such as Egypt, Kuwait, Qatar and the United Arab Emirates; fourth, those that stipulate that Islam is the state religion, and the head of state should be Muslim, such as Tunisia, Algeria and others; fifth, those that stipulate that Islam as the state religion, such as Jordan, Malaysia and others, and sixth, those that do not mention Islam in their constitution, as in the case of Turkey and Indonesia.

Although there is similarity between Turkey and Indonesia in the case of the absence of Islam in their constitutions, there are differences in the position of religion in these two countries as well as the application of Islamic law as national law. The Indonesian constitution stipulates that the state is based on belief in God, and this country has legislated

certain Islamic law, such as family law, Islamic banking, *ḥajj*, *zakāh* and others. Meanwhile, Turkey is based on secularism, although there is a Directorate of Religious Affairs (*Diyanet*) which mainly organizes *khutbah* (Friday sermon) and religious education in public schools. Since several years ago, there has been new development in this country that shows "Islamization of public policy", supported by the Justice and Development Party (AKP) as the ruling party.

Adoption of Democracy

In line with globalization and modernization, most contemporary ulama as well as Muslim intellectuals and political leaders support democracy as a political system in Muslim country. The modern democratic ideas were shaped to a large extent by the ideas and institutions of the enlightenment tradition that began in the sixteenth century, among them the ideas of secularism initiated by Niccolo Machiavelli (1469-1527) (Apter, 1977). Therefore, there are various responses or opinions among ulama as well as Muslim intellectuals and activists on the term and concept of democracy, which are classified into three responses. Firstly, those who support democracy as a political system that is compatible with Islam, although there are some respects of democracy that should be adjusted to Islamic teachings. Secondly, those who reject democracy and consider it as incompatible with Islam, because it is based on secularism, which separates religion and state as well as negates the sovereignty of God. Thirdly, those who fully support democracy based on secularism without adjustment to Islamic teachings.

Muhammad 'Abduh, inspired by Jamal al-Din Al-Afghani, was the first Islamic scholar, who promoted Islamic modernism, including Islamic political thought that supports the idea of democracy (J. Esposito, 1995). Ali Abd al-Raziq was the first Islamic scholar who supported the separation of religion and state, which implies support for democracy based on secularism, while Sayyid Quṭb was considered as the first Islamic scholar who strongly opposed un-Islamic political system to be implemented in an Islamic society. In accordance with Quṭb, most "Islamic fundamentalists" or "Islamists" and Salafists oppose the term and concept of democracy. Hafiz Salih, for instance, forbids the use of the term and concept of democracy, because this concept means negating Allah's sovereignty over humans (Salih, 1988). Yet many moderate

Islamists, such as Abu 'Ala al-Maududi and Yusuf al-Qarādawī, do not refuse democracy out of hand. Maududi distinguished between the concepts of democracy philosophically and its organizational form (Maududi, 1960), while al-Qarādawī considers that the substance of democracy is compatible with Islam (al-Qarādawī, 1997).

Although almost all governments in the Muslim World characterize their political systems as democratic or are moving toward democratization, many of them do not implement democracy substantively. Many of them continue to embrace their authoritarian system to maintain their power by restricting any political activities of the citizens that can influence to reducing or threatening their power, and some of them even reject democracy and maintain their monarchic system. Such a condition then led to the emergence of anti-authoritarian demonstrations, protesters, and riots in several Middle East countries, and in 2010-2011 they succeeded to demand Tunisia's President Zine Al Abidin Ben Ali and Egypt's President Hosni Mubarak and Moammar Gaddafi to step down. The events are then regarded as the emergence of Arab Spring, although it failed and even led to the emergence of serious problems as have occurred in Syria, Libya, and Yemen. Tunisia is the only Arab country that successfully conducted democratic transition. In other side, there were international demands to governments of Muslim countries to give more political freedom, but they argued that they are more liberal and tolerant than "fundamentalist" group who would likely replace them (Zakaria, 2004).

The failure of democratic system in most Muslim countries leads to discussions about the compatibility of Islam and democracy, as there have been discussions on the compatibility of religion and democracy. This is because in the theory of secularism and modernization, religion was considered as a force for authoritarianism and an obstacle to the quest for "modernity and rationality" which then could lead to democracy (Stepan, 2012). There is no agreement among political scientists and observers about the compatibility of religion and democracy. Many political scientists assume that religion and democracy are incompatible, but many others argue that religion and democracy can be compatible if the religion is understood and interpreted progressively, while the democracy is understood as the expression of religious freedom (Fox & Sandler, 2005).

Some observers thought that both the religion of Islam and realities of Muslim politics demonstrate that Islam is incompatible with democracy (Esposito, 2004). Glenn E. Perry, for instance, argues that Islam is incompatible with democracy, because it rejects popular sovereignty (Perry, 2003). On the other hand, scholars such as John L. Esposito and John O. Voll, thought "that Islam is not inherently incompatible with democracy. Political Islam is a program for religious democracy and not primarily an agenda for holy war or terrorism" (Esposito & Voll, 2021). The rise of Arab spring in 2011, which gave more political freedom to the people, has shown this, so that many prominent political leaders and observers stated the compatibility of Islam and democracy. Unfortunately, the Arab spring is not running well as occurs in Egypt, Libya and Syria, and this can strengthen the opinion that Islam is incompatible with democracy. The Arab spring even inspired to the rise of new generation of radical Muslim groups, especially Islamic State of Iraq and Sham (ISIS) in 2013, which is more extreme than other groups like Al-Qaedah. The problem of democracy in most Muslim countries is more caused by the absence of government political will that supports democracy rather than the existence of a conservative understanding of Islamic doctrines as well as the low level of education and economic welfare of Muslims.

As regards political reform and democracy, there are various forms of political will of government in the Muslim countries. Some of them support substantive democracy, and many of them support only procedural democracy, but several of them do not support democracy at all. Hence, there are various practices of democracy in the Muslim countries which can be classified into four groups, namely: first, countries which practice democracy substantively, namely Indonesia, Tunisia, Turkey, Malaysia, and Nigeria; second, countries which are making enough efforts to substantive democratization , such as Pakistan, Lebanon, Jordan, Bangladesh, and Morocco; third, countries which support democracy but not substantively, such as Egypt, Syria, Algeria, Iran, Sudan, and Libya, and fourth, countries which do not promote democracy but simply promote justice and equality as the basic principle in state policy, such as Saudi Arabia and other Gulf countries.

The Application of Sharia

Sharia (Islamic law) as part of Islamic doctrines is the most important and distinctive aspects of Islamic teachings in the life of society and state, so that its existence becomes indicator of religiosity of a Muslim society or country. Historically, Islamic law has been a positive law in the caliphate, sultanate, and Islamic empire, but the arrival of European colonialism to many Muslim countries has reduced the presence of Islamic law among its adherents. They introduced their own secular law through their power and through modern education for Muslims. Since then, the process of secularizing law by adopting Western law has continued, even after the end of colonial rule in Muslim countries. The secularization of law continues to this day in line with the process of modernization and globalization, although this has also been responded to by de-secularization or Islamization of law in several Muslim countries. On the one hand, this has changed the position of Islamic law in many Muslim countries, and on the other hand, this has resulted in the need for reinterpretation of Islamic law in the modern era.

The Position of Islamic Law

As mentioned above, most constitutions in the Muslim countries stipulate the position of Islam and sharia (Islamic law) in the state. The constitutions indicate that the majority of Muslim countries did not fully enact Islamic law as national law, and most of them have developed their national law in the manner of secular Western law. Only the first group (those that stipulate that Islam is the state religion, the head of state should be Muslim, and the shariah is national law) can be called "Islamic states", such as Saudi Arabia and Iran; while the others are called "Muslim states". In several countries, such as Indonesia and Malaysia, the Islamic law is applied in certain provinces of the countries, such as in Aceh (Indonesia) and Kelantan (Malaysia). Most Muslim countries enact Islamic family law (Mahmood, 1987) and some even enact other private laws, such as Islamic business law. Only a few Muslim countries fully implement secular laws, such as Turkey, Tunisia, and Azerbaijan.

The secularization of law in most Muslim countries has been an ongoing process even after these countries have become independent

states. Nevertheless, in many countries there are efforts of Islamization of national law. There are two ways or strategies of Islamization of law: first, the application of Islamic law to be national law through legal and constitutional ways, and second, the total application of Islamic law through social movements or even revolutions. Most ulama and Muslim leaders support Islamization through the first way, because this will run peacefully, while the second way can lead to violence or civil war.

The application of Islamic law through integration with national law takes three forms: first, the formal application of Islamic law for particular private laws such as family law, waqf law, zakat law, Islamic banking, and others; second, substantive application of Islamic law by integrating its substance into national law, such as the death sentence for the crime of murder without mentioning it as *qiṣāṣ* (retaliation), and third, the essential application of Islamic law by integrating the essence of Islamic law into national law, such as imprisonment for the crime of theft even though it is not the same as Islamic law.

The first form can only be applied in an Islamic and Muslim countries, but the second and the third forms are applied in Muslim and non-Muslim countries. This means that the ulama and Muslim intellectuals are currently obliged to carry out *ijtihād*, both in the form of interpretation of Islamic law (*istinbāṭī*) or in the form of its application (*taṭbīqī*) in certain societies and countries. In this context, the theory of *maqāṣid al-sharī'ah* (the objectives of sharia) becomes one of the important *ijtihād* methods to solve the dilemmas or problems of the application of Islamic law.

There are several examples of the application of Islamic law in the first way. In Egypt, for example, not long after the promulgation of the Constitution in 1970s and continuing to 1980s, Islamic groups, including al-Azhar ulama, proposed Islamization of Egyptian laws, among others by reintroducing Islamic criminal law and prohibiting usury (*ribā*). The Al-Azhar University also formulated a draft of constitution, which shows the total Islamization of Egyptian law. However, the government and the Coptic community objected to this proposal, especially regarding the law of apostasy (*riddah*). As a concession of this objection, article two of the Constitution "the principles of Islamic shariah are a main source of legislation" (*mabādi'*

al-sharī'ah al-Islāmiyyah maṣdar ra'īsī)" in July 1979 was revised to "the principles of Islamic shariah are the main source of legislation" (*mabādi' al-sharī'ah al-Islāmiyyah al-maṣdar al-ra'īsī*) (Mayer, 1995).

Unlike Egypt, which has carried out Islamization of law through constitutional amendment, most Muslim countries have done this in the form of enactment of certain Islam laws or absorption of their substance into state regulations. Indonesia, for example, enacted a zakat law in 1998, a waqf law in 2004, and a shariah banking law in 2008, while Malaysian states enacted Islamic banking law in 1983 and enacted zakat and waqf laws in 1983-2016. Even in Turkey and Tunisia, there has been the Islamization of government policies accommodating certain provisions of Islamic law, such as the abolition of the prohibition on wearing headscarf (hijab) for female students and civil servants (Marks, 2017).

In contrast to the first way, certain Islamic movements, especially *al-Ikhwān al-Muslimūn* (Muslim Brotherhood), demand the total application of shariah. The ultimate goal of this organization is to establish Islamic Order (*al-Niẓām al-Islāmī*), which means that a Muslim state must be based on shariah, and that there is no separation between church and state (Mitchell, 1993). One of the main principles of the Muslim Brotherhood to achieve the goal is jihad, which is also symbolized in the motto "*al-jihād wasīlatunā*" (jihad is our means). According to them, the demands are a kind of "re-Islamization" of the legal and political system. This is not a kind of "Islamization" of the legal and political system, because in the last few decades all of these systems have been Islamized (Bassam, 1993).

As the successor of al-Banna, Sayyid Quṭb (1906-1966) promoted offensive jihad based on Q.S. al-Taubah: 29 and 36; and he strongly condemned the opinion that war in Islam is defensive (*al-difā'yyah*) (Quṭb, 1979). This ideology combined with Salafi ideology led to violence and terrorism in the name of jihad, especially after being adopted by Al-Qaedah and Islamic State of Iraq and Syria (ISIS), so they are called "Jihadist-Salafism", a term firstly introduced by Gilles Keppel (Kepel, 1996). In line with globalization, this radical ideology has spread throughout the world and inspired several radical Islamic groups to carry out violence and terrors as part of jihad, both in Muslim countries and non-Muslim countries. Several Islamic revivalist

movements have succeeded in implementing shariah, such as in Pakistan (since 1977), Iran (since 1979), and Sudan (1991-2020).

Reinterpretation of Islamic Law

The globalization also has impact on the need for reinterpretation (new *ijtihād*) of certain provisions of Islamic law that are not in accordance with modern perspective and challenges, especially those based on relative meaning texts (*naṣṣ ẓannī*) and unclear meaning texts (*naṣṣ ghayr ṣariḥ*). There are four factors driving the need for new *ijtihād* at this time: first, different social conditions between the past and the present or from one region to another; second, the occurrence of social changes and international dynamics; third, the development of modern science and technology; and fourth, the emergence of social problems. There are many things outside the law of worship ('*ibādāh*) that require new *ijtihād* because of different condition between the past and present. However, in this discussion, the article will only discuss provisions related to the concept of Society 5.0, especially digital transaction (electronic transaction) as well as peaceful relationship between Muslims and non-Muslims.

As mentioned above, the globalization has influenced human ideas, behavior, and activities, including human relations and communication with various ethnic, racial, and national backgrounds. This requires people to practice mutual understanding, mutual respect, mutual help, and cooperation as well as dialogue and communication by promoting brotherhood, equality, loyalty, and peace. This also implies that Muslims should have good relationship with non-Muslims and possibly cooperate with them in various aspects of life, especially in the fields of economy and sciences. There are two opinions among ulama regarding the basic relationship between Muslims and non-Muslims, namely those who argue that the basic relationship is conflict and war, and those who argue that the basic relationship is peace.

According to many classical ulama, Islam invites non-Muslims (infidels) to convert to Islam, but if they refuse, they must be fought, so that war is an offensive jihad (*hujūmiyyah*) (al-Qarādawī, 2009). Currently, only radical ulama and fundamentalists support the offensive jihad, especially the founder of the Salafi/Wahhabi school, Shaikh Muhammad

ibn Abd al-Wahhab and the leader of *al-Ikhwān al-Muslimūn*, Sayyid Quṭb. This opinion is based, among other things, on the following verses which are understood literally disregarding the context in which the verses were revealed (*asbāb al-nuzūl*): first, Q.S. al-Taubah: 5, which states that Allah ordered the prophet and the Muslims to declare war on the Meccan infidels wherever they were, second, Q.S. al-Taubah: 29, which states that Allah ordered the prophet and the Muslims to combat those who do not believe in Allah and the Last Day as well as do not embrace the religion of truth, and third, Q.S. al-Taubah: 73, which states that Allah ordered the prophet to carry out a jihad of war against infidels and hypocrites as well as to face both groups firmly.

Most contemporary ulama support the opinion that the basic relationship is peace, which is in line with the Islamic mission as "*raḥmatan li al-ʿālamīn*" (blessing for the universe) as stated in Q.S. al-Anbiyāʾ: 107: "And We did not send you (O Muhammad!) but as a blessing and mercy, for all beings." This principle is also in line with God's commandment that human beings are made up of various tribes and nations to know each other and work together, as stated in Q.S. al-Ḥujurāt: 13 mentioned above. War was initially prohibited by Islam but was later permitted due to the incessant attacks from other parties against the Muslims, as mentioned in Q.S. al-Ḥajj: 39: "Permission to fight back is hereby granted to those being fought, for they have been wronged. And Allah is truly Most Capable of helping them prevail." This means that war is launched if non-Muslims attack the Muslims first.

Thus, Islam does not prohibit Muslims from having good relations with non-Muslims, as stated in Q.S. al-Mumtaḥanah: 8: "Allah does not forbid you from dealing kindly and fairly with those who have neither fought nor driven you out of your homes. Surely Allah loves those who are fair." The verses of war stipulated in Q.S. al-Taubah: 5, 29, and 73 above literally show the meaning of offensive war. In fact, when viewed from the context of revelation (*asbāb al-nuzūl*), these verses show that all wars ordered by Allah are defensive.

The Q.S. al-Taubah: 1-5 above was revealed in the 9th year AH, one year after the conquest of the city of Mecca (*Fatḥ Makkah*) in the 8th year AH (628 AD). Because the infidels of Mecca often broke agreement, then in the 9th year AH, Allah canceled the agreement and

allowed the Muslims to fight them except the Bani Dhamurah and Banu Kinanah, who consistently obeyed the agreement (al-Marāghī, 1946). Previously, in the 6th year AH (626 AD) the Prophet Muhammad and the 1,400 Muslims went to Mecca to perform *ʿumrah* (non-mandatory pilgrimage to Mecca). Yet infidels of Mecca refused the Prophet's group to enter Mecca and asked them to return to Medina. Although initially some of the Prophet's companions objected, the Prophet was willing to make the Hudaibiyyah Agreement with the infidels of Mecca. The treaty stipulated that the Prophet and the Muslims should return to Medina but could return to Mecca next year and stay in peace for three days without weapons except for a sheathed sword (https://Mawdoo3.com).[2]

The Q.S. al-Taubah: 29 above is related to the Tabuk expedition in the 9th year AH. The failure of Byzantine troops to defeat the Islamic army in the Battle of Mu'tah in the 8th year AH sparked Heraclius's anger to again attack the Prophet Muhammad and the Muslims by sending army more than 200,000 personnel to Medina (al-Marāghī, 1946). In this case, the Byzantine troops had already moved into the northern region of the Arabian Peninsula and conquered Iraq, Egypt, and Damascus. Knowing the movement of the Byzantine army, the Prophet Muhammad at the command of Allah made a strategy to block them in Tabuk so that they would not reach Medina. Hearing the Muslim army arrived in Tabuk, the Byzantine army was afraid and left the Arabian Peninsula, so that the war did not occur. Yusuf al-Qarādawī called this event not a defensive war (*difāʿiyyah*) but a preventive war (*wiqāiyyah*) (al-Qarādawī, 2009).

In line with globalization, the information technology has changed the mindset and work patterns as well as interaction and communication between humans in the life of society and state. Since 1990s Muslims have massively use digital technology for various purposes, such as storing compact file of Islamic materials, education and spreading Islamic teachings as well as making their lives more practical in communication, information, administration, trade (Shahid, Khaliq & Mohtesham 2021), and so on. Electronic transaction is defined as "an act of buying or selling something or sending money electronically, especially over the internet" (https://Dictionary.Cambridge.org). According to fiqh (Islamic jurisprudence), a transaction (*ʿaqd*) in commerce should be

realized in the form of *ṣighāt* (contract statement), which is one of the important elements in contract, especially to avoid fraudulent elements in transactions carried out by two people or parties. Traditionally, *ṣighāt* of both *ijāb* (offer) and *qabūl* (acceptance) should be expressed orally, but in line with the process of modernization and globalization, most ulama allow the *ṣighāt* to also be expressed in the written form.

Thus, a contract statement can be in the form of an oral or written expression and can also be in the form of a customary sign or a real exchange that show an agreement between the two parties. Many ulama consider that a statement of contract via computer can be included in the classification of written expression. Of course, it is not writing on paper but electronic writing that can be read by machines and humans after being converted from machine language to human language (al-Dhib, n.d.). Electronic commerce is legal even though there is no direct relationship between the contracting parties and no paper documents are exchanged in the commercial process. This is because the accurate information technology can avoid fraud in transactions.

Conclusion

This paper concludes that globalization is an unavoidable process that occurs in all countries in the world. This brought about new set of ethics and norms of human relations which in certain some ways led to the change of worldviews as well as social, economic, and political system in the world. In the process of globalization that went hand in hand with colonialism and modernization, a part of Western ideology and system has influenced the political, economic, and social systems of Muslims, as evidenced, among other things, by the process of secularization adopted by almost all Muslim countries. The majority of ulama and Muslim intellectuals accept globalization, including the influence of Western civilization, with certain adjustments that refer to Islamic teachings and national identity. There are several examples of the influence of Western civilization on Muslim countries, especially nation-state, democracy, and human rights protection.

The globalization has influenced the status of Islamic law in many Muslim countries, especially in the form of secularization of law, which continued even after these countries became independent countries.

Nevertheless, in many countries there are efforts of Islamization of national law. There are two ways or strategies of Islamization of law, namely the adoption of Islamic law to be national law through legal and constitutional ways, and the total application of Islamic law through social movements or even revolutions. Most ulama and Muslim leaders support Islamization through the first way, because this way will run peacefully, while the second way can lead to violence or civil war.

Moreover, the globalization has also given impact on the need of reinterpretation (new *ijtihād*) of certain provisions of Islamic law that are not in accordance with modern perspective and challenges, especially those based on relative meaning texts (*naṣṣ ẓannī*) and unclear meaning texts (*naṣṣ ghayr ṣariḥ*). There are some provisions that require new *ijtihād* due to different condition between the past and the present, especially the important points related to society 5.0, such as digital transaction as well as the concept of jihad and peaceful relationship between Muslims and Non-Muslims. Indeed, Islam does not forbid Muslims to have good relations with non-Muslims, as stated in Q.S. al-Mumtaḥanah: 8. In line with this, contextual interpretation of jihad verses shows that jihad is carried out as a form of defense against enemy attacks. Meanwhile, in line with the digital technology, Islamic law allows electronic commerce or digital transaction even though there is no oral statement and direct transaction between the two parties, because the accurate information technology can avoid any fraudulent elements in transactions.

Endnotes

1   As mentioned in article 1 of the UN Charter, the Purposes of the United Nations are:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

(2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; …..

2   Related to the Hudaibiyyah Agreement is the revelation of Q.S. al-Fatḥ: 29: "Muḥammad is the Messenger of Allah. And those with him are firm with the disbelievers and compassionate with one another." In this event, 'Umar ibn al-Khattab was tough on the infidels of Mecca and did not want to accept an agreement which was very detrimental to the Muslims. However, the Prophet Muhammad was lenient and accepted the agreement, with the consequence that the Prophet and the Muslims returned to Medina and did not perform the pilgrimage that year. Thus, if we pay attention to the context of the revelation of the verse (*asbāb al-nuzûl*), this verse cannot be used as an argument for prohibiting good relations between Muslims and non-Muslims.

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