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LEGAL BENEFITS (UTILITY) ACCORDING TO HASBI ASH-SHIDDIEQY (INTERNALIZATION OF ISLAMIC LEGAL PHILOSOPHY IN THE COMPILATION OF ISLAMIC LAW)

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ABSTRACT

Law, fundamentally, is intended to provide benefits for human life. With the principle of benefit in mind, the law will be dynamic in responding to the dynamics of human life, thus not detached from human life. There is an interconnection between the normativity of law and the historicity of humanity. The method used in this research is the normative research method, which examines the history of law in its development based on the thoughts of Hasbi Ash-Shiddieqy. From this research, it can be concluded that Hasbi, in the field of Islamic Law, introduces the concept of the benefits of Islamic law to the Indonesian public in a balanced manner. Hasbi's thought constructs in the field of benefits are based on: Istihsan, Saddudz Dzari'ah, and Maslahah.

Keywords: Law, society and legal benefits

Abstrak:

Hukum pada dasarnya diperuntukan untuk memberikan kemanfaatan bagi kehidupan manusia, dengan prinsip kemanfaatan tersebut maka hukum akan dinamis dalam menyikapi dinamika kehidupan manusia, sehingga hukum tidak vakum dari kehidupan manusia, sehingga ada keterikatan antara normativitas hukum dengan historisitas manusia. metode yang digunakan dalam penelitian ini merupakan metode penelitian normatif yang mengkaji sejarah hukum dalam perkembangannya berdasarkan pemikiran Hasbi Ash-Shiddieqy. Dari penelitian ini maka dapat ditarik kesimpulan bahwa Hasbi pada bidang Hukum Islam menggelontorkan konsep kemanfaatan hukum Islam kepada publik Indonesia yang seimbang, konstruk pemikiran Hasbi pada bidang kemanfaatan bersendikan pada : Istihsan, Saddudz Dzari'ah dan

<p>4.0). For more information visit (http://creativecommons.org) Attribution-ShareAlike 4.0 International License</p>	<p>kemaslahatan. Kata kunci : Hukum, masyarakat dan Kemanfaatan hukum</p>
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PENDAHULUAN

In principle, Indonesia is a state of law, which is explicitly explained in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia which states that "The State of Indonesia is a state of law." Likewise, Article 29 of the Indonesian Constitution confirms that "the State is based on the belief in One Almighty God, the State guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and beliefs." This creates a complex relationship between the legal system implemented in the Republic of Indonesia and Islamic Law practiced by the majority of Muslims living in the country's territory.

Historical facts present the fact that the existence of Islamic law in Indonesia began with the entry of Islamic teachings into the archipelago which gave birth to three major theories, namely Gujarat, Makkah and Persian theories, then during the founding of the Islamic archipelago kingdom, Islamic law applied in each of these kingdoms, during the colonial period. In the Netherlands and Japan, two major currents of law emerged, namely Islamic Law and Customary Law, as well as after independence, the old order, the new order and the reform order, the essence of the existence of Islamic law in the Republic of Indonesia became increasingly interesting to study comprehensively.

Discussing the configuration between Islamic law and Indonesian positive law is very interesting to present in the midst of issues regarding the rejection of the application of Islamic law in the realm of establishing and enforcing Indonesian law, that the Indonesian population, the majority of whom embrace Islam, cannot be denied. There is a feeling and desire to uphold the law. Islam in the midst of social life, discourse on the Islamization of Islamic teachings, internalization of Islamic teachings.

The dynamics and construction of the development of Positive Law in Indonesia recognize the existence of legal material with the term Compilation of Islamic Law (KHI), the essence of its existence is based on Presidential Instruction (Inpres) No. 1 of 1991 as a form of follow-up to the decision of the Supreme Court and the Minister of Religion dated March 21 1985, KHI as a legal product will certainly provide benefits¹ for the life of the nation and state both from the perspective of Islamic Law and from the construction of positive law, an Islamic Legal Thinker Muhammad Ma'ruf al-Dawaliby said that in fact the purpose of Islamic

¹ Law Developers in Indonesia recognize the purpose of law in 3 aspects, namely Justice, Certainty and Benefit.

Law is for the benefit of mankind, therefore Where there is benefit, there is also the Law of Allah SWT.² British scholar Jeremy Bentham stated: "The law aims to realize only what is beneficial to people"³³The various opinions of legal experts regarding the benefits of law are very diverse, influenced by their respective backgrounds, the uniqueness and diversity of opinions emerged by legal experts regarding the principle of legal benefits. This concept of legal benefits is the basis for thinking of the founders and thinkers of the internalization of Islamic law in the positive law of the Republic of Indonesia known as the Compilation of Islamic Law.

In the legal system in Indonesia, the Compilation of Islamic Law has no position. The Compilation of Islamic Law is a presidential instruction. However, because it is widely referred to by judges in religious courts, the Compilation of Islamic Law has become a very famous written document. And because the articles in the Compilation of Islamic Law are often referred to in court decisions, in the system of legal sources, the values of the Compilation of Islamic Law become jurisprudence. From there, Islamic law also existed. He lives and becomes a general norm for Islamic society in Indonesia.

To understand the construction of the Compilation of Islamic Law (KHI) within the framework of the State of Law of the Republic of Indonesia, one way is to examine the thoughts of the figures who were the figures or founders of the KHI and one of the figures of Indonesian Islamic law who is referred to by some experts as the founder of the indigenization of Islamic Law which led to the Law compilation process. Islam in Indonesia is Muhammad Hasbi ash-Shiddieqy, one of the unique and interesting things to study because he was able to develop mantiq (logic) in developing Islamic law and one of the developments of mantiq (logic) in the field of Islamic law was his thinking about the concept of the Benefits of Law (including law). Islam), what and how and the actual scope of the principle of legal benefit?, He was often put forward as the main founder of the process of compiling Islamic Law into positive Indonesian law.

METODE PENELITIAN

First and foremost in the legal history research method which emphasizes the journey or process of legal thought in the dynamic trajectory of developing law, the first effort is to formulate various interesting and basic things in studying the life history of figures, the basic thoughts on the benefits of law (utility) stated by KH. Hasbi Ash-Shiddieqy, an Indonesian Muslim figure who has made many efforts to internalize Islamic law into in Indonesian national law, then the next stage is collecting sources (heuristic).

² Muhammad Ma'ruf al-Dawaliby, *Introduction to the Science of Ushul Fihq*, translated by Salim Bahriesy, (Jakarta, Bulan Bintang, 1989), p.7.

³ See Ade Maman Suherman, *Introduction to Comparative Legal Systems*, (Jakarta, PT RajaGrafindo Persada, 2008), p.10.

Therefore, the focus in this research is on scientific research methods that find the sources of legal products with the type of normative legal research, namely research that emphasizes and discovers the legal norms that are used by emphasizing the nature of research in its presentation which is descriptive analytical in nature where all the legal materials found are explained described and described and then analyzed.⁴

DISCUSSION

History of the Life of Hasby Ash-Shiddieqy

Muhammad Hasbi Ash-shiddieqi was born in Lokseumawe on 10 March 1904 and died in Jakarta on 9 December 1975. He was an Indonesian cleric who was an expert in fiqh, tafsir and kalam sciences. His father, Tengku Qadhi Chik Maharaja Mangkubumi Husien Ibnu Muhammad Su'ud, was also a famous ulama in his village and owned an Islamic boarding school. (Meunasah). His mother's name is Tengku Amrah binti Tengku Chik Maharaja Mangkubumi Abdul Aziz, the daughter of a Qadhi of the Sultanate of Aceh.

According to the genealogy of M. Hasbi Ash- is a descendant of Abu Bakar ash-shiddieqi (575-13 H/634 AD) the first caliph. He is the 37th generation of the caliph who attached the title ash-shiddieqi after his name.

His religious education began at his father's Islamic boarding school, then for 20 years he visited Islamic boarding schools from one city to another. He obtained his knowledge of Arabic from Sheikh Muhammad ibn Salim al-Kalali, an Arab scholar.

In 1926, he went to Surabaya to continue his education at Madrasah al-Irsyad, a religious institution founded by Sheikh Ahmad Soorkati (1874-1943), a Sudanese cleric who had a modern outlook at that time. There, he specialized in education and languages for two years. Experiences at Al-Irsyad and with Ahmad Soorkati played an important role in shaping his modern thinking. After returning to Aceh, he immediately joined Muhammadiyah, an organization that had a vision in line with his modern thinking.

During the Liberal Democracy era, he was actively involved in ideological debates in the Constituent Assembly through the Masyumi party (Indonesian Muslim Syuro Council). In 1951, he settled in Yogyakarta and focused on education. In 1960, he was elected dean of the Sharia Faculty at IAIN Sunan Kalijaga Yogyakarta, and he served in that position until 1972.

His Islamic prestige and recognition of his leadership as a scholar can be seen from the several honorary doctorates he received. For example, he received an honorary doctorate from Bandung Islamic University on March 22 1975, and from

⁴ Sigit Sapto Nugroho, Anik Tri Haryani and Farkhan, 2020, *Legal Research Methodology*, Sukuharjo: Library Oasis, p. 29

IAIN Sunan Kalijaga on October 29 1975. Previously, in 1960, he was appointed as a professor in hadith science at IAIN Sunan Kalijaga.

He was a scholar who was very productive in expressing his ideas about Islam through writing. According to records, he has written 73 book titles. Among the areas he worked on, included eight titles on hadith, six titles on tafsir, five titles on monotheism/kalam science, while the rest discussed various general themes.

At the final stage of his academic career, before his death, he was awarded two honorary doctorates in appreciation for his contribution to the progress of Islamic higher education and the development of Islamic science in Indonesia.

At the final stage of his academic career, before his death, he was awarded two honorary doctorates in appreciation for his contribution to the progress of Islamic higher education and the development of Islamic science in Indonesia.

On December 9, 1975, after several days of hajj quarantine to perform the hajj, he died and his remains were buried at the IAIN Ciputat family cemetery in Jakarta. During the funeral ceremony, Buya Hamka gave a speech, and during the funeral, the deceased Moch released his body. Rome. The last manuscript he wrote was the Hajj Guide which has now been widely circulated in the community.

Hasbi Ash-Shiddieqy's Thoughts About the Benefits of Law

Hasbi Ash-Shiddieqy, a well-known Indonesian Muslim Fuqaha, was in reality faced with a period of conflict between the Unitary State of the Republic of Indonesia (NKRI) which emphasized the ideology of Pancasila as the only state ideology, while Muslims at that time understood Islam as their ideology. The pros and cons of the Pancasila ideology have an impact on the issue of implementing law that can be applied in social, national and state life, various attempts to compromise to find agreements on the pros and cons both by experts in positive law and Islamic law.

One of the famous Muslim figures who comprehensively and deeply understands the intricacies of Islamic law (Jurisprudence) is Hasbi Ash-Shiddieqy, he tried his best to deconstruct Islamic laws (fiqh) In the legal framework of the Unitary State of the Republic of Indonesia (NKRI), this form of legal compromise was later known as the Compilation of Islamic Law (KHI), the way to success was by showing the benefits of the law, because this issue was able to become a catalyst to accelerate this compromise. Therefore, presenting the thoughts about the benefits of law put forward by Hasbi Ash-Shiddieqy's thoughts really exist in deep existence.

The efforts behind the presence of Islamic law (fiqh) in the Unitary State of the Republic of Indonesia (NKRI) are called the Compilation of Islamic Law:

1. Definition and Limitations of Legal Benefits

The benefits of law in Islamic law are known as: "Maintaining the meaning of the law by rejecting everything that damages humans or damages the public interest."⁵ or maintaining all the purposes of syara' (law) towards creatures⁶

According to Hasbi⁷ that legal expediency is carried out in consideration of three things which he refers to as *Ruhul Maslahah* namely:

- a. *Dlaruriyah*; everything that must exist for the upholding of human life both religiously and worldly, where the *dlaruriyah* things are collected in: 1. Maintaining the soul, 2. Maintaining religion, 3. Maintaining reason, 4. Maintaining offspring and 5. Maintaining wealth.
- b. *Hajiyah* is everything that the community wishes to avoid or eliminate pettiness, if a *Hajit* is not realized it does not harm life but only causes pettiness and narrowness.
- c. *Tahsiniyat*: using everything that is appropriate and appropriate that is allowed by good customs.

Hasbi then stated that in addition to paying attention to things that bring benefits, things that bring harm are also taken into account:

- a. The poverty is of a general nature, like a poor man who waits for goods to be sold outside the market and refuses to sell his property that many people wish for, such as to build a mosque.
- b. Poverty is unique, divided into two: First cause misery to other people, but he has to do it, such as defending himself or buying what he needs, even though he knows that this will cause misery to other people., Second, does not bring misery to him, there are three kinds of things:
 1. Bringing accidents to people, such as digging a well behind the gate in a dark place which will lead to people entering their garden (yard).
 2. Which sometimes causes damage to other people, such as digging a well in a place where people usually don't go there and like eating food that usually doesn't bother someone.
 3. What often leads to accidents for people is divided into two things: First which are often misused such as selling weapons to the enemy, selling wine to wine sellers, Second Doesn't often cause damage to others, such as sales at tough prices.⁸

According to Hasbi, the boundaries or areas in discussing the benefits of law consist of three parts, namely: *Istihsan*, *Qaidah Saddudz Dzari'ah* and *Maslahat*.⁹

⁵ See Moenawar Chalil, *Back to the Qur'an and As-Sunnah*, (Jakarta, CV. Diponegoro, 1987), p.233

⁶ See Hasbi Ash-Shiddieqy, *Philosophy of Islamic Law*, (Jakarta, Bulan Bintang, 1975), p. 186

⁷ *Op.Cit*, h.186-198.

⁸ Hasbi ash-Shidieqy, *Op.Cit*, h.262.

⁹ *Ibid*, h.300-350.

Istihsan in language means: "Considering good (looking good at something)¹⁰ or return something to good¹¹, while Sadduz dzari'ah consists of two words "sad and dzari'ah". Sad means barrier, obstacle or blockage, whereas "dzari'ah" means "path". It means to hinder or block or block all paths that lead to destruction or immorality.¹²

Abu Zahrah stated that according to the language Dzari'ah means "wasilah or intermediary", whereas according to the term it means "something that becomes an intermediary towards actions that are forbidden or permitted. In this case the legal provisions imposed on dzari'ah always follow the existing legal provisions on the actions that are the target.¹³ Therefore, determining the law with the sadduz dzari'ah method is the opposite of the istihsan method, in the sense of establishing the law of prohibition against an act that was originally allowed because the act could cause mafzad or damage.¹⁴ Meanwhile, Maslahat means attracting benefits and rejecting harm¹⁵

2. *Istihsan*

Istihsan according to Hasbi can be understood in two senses, namely:

- a. Using ijthad and all the power of thinking in determining something that is syar' (law) leave the matter to our own opinions.
- b. Dalil (reason) that balances qiyas (analogy) or leaves qiyas (analogy) and establishes what is more beneficial for humans.¹⁶

The types of Istihsan according to Hasbi are:

First, Istihsan with texts (legal basis/dalil), namely every problem that has a legal basis (nash) itself which gives rise to a law that is different from the general law stipulated by a general text or qaidah, for example: If there were no texts that did not break the fast because of forgetting to eat and drink, of course this would break the fast.

Second, Istihsan due to Ijma (agreement), when the mujtahids (jurists) have an opinion on a problem that is contrary to qiyas (analogy) or to the will of a general argument, or they remain silent and do not object to a community custom/custom that is contrary to the law of qiyas.

¹⁰ *Ibid*, h.300.

¹¹ Syekh Abdul Wahab Khallaf, *Knowledge of Ushul Fiqh*, Translated by Halimuddin, SH, (Bandung, Rineka Cipta, 1993), p.93.

¹² Kamal Muchtar, et al, *Ushul Fiqh 1*, (Wakf Bhaakti Fund, 1995), p.156.

¹³ Muhammad Abu Zahrah, *Ushul Fiqh*, translated by Saeful Mashum, et al, (Jakarta: Pustaka Firdaus, 1995), pp. 438-439.

¹⁴ Asjumuni Abdurrahman, *Highlights of several problems surrounding Ijtihad*, Inauguration Speech of IAIN Professor Sunan Kalijaga (Yogyakarta, 1996), p.7.

¹⁵ Hasbi Ash-Shiddieqy, *Op.Cit*, h.329.

¹⁶ *Op.Cit*, h.301.

Third, Istihsan due to emergency and to eliminate pettiness, *Fourth*, Istihsan is due to benefits that have not yet reached the limit of emergency.¹⁷

Isthsan is the strongest argument showing that Islamic law is a law that develops in society.

3. Saddudz Dzari'ah

If Istihsan tends to pay attention to the benefits of a legal decision for humans, then Saddudz Dzari'ah places more emphasis on the process of blocking or blocking the process of legal decisions or legal actions that damage human life.

Hasbi agrees with Imam al-Syatibi in measuring an act that needs to be prohibited:

- a. Acts that can be done lead to corruption or damage
- b. The damage is stronger and greater than the benefit of the permitted act.
- c. In carrying out permissible actions, the elements of damage are greater compared to the benefits.¹⁸

According to Hasbi, the forms of dzari'ah can be divided into four forms:

- a. That this act is permissible, but if it is carried out in certain circumstances it will definitely result in damage.
- b. If this action is carried out it can cause damage but it rarely happens.
- c. An action that is permissible to do because it contains benefits but usually causes damage.
- d. An action is permissible to do because it contains benefits but the action causes damage.¹⁹

3.Maslahah

Maslahah is a combination method between Istihsan and Saddudz Dzari'ah, which is to consider between seeing the usefulness of something for human life and rejecting or blocking a legal act that causes damage to human life. which Hasbi summarized in a concept of legal theory "*jal-bul manfa'ah wadaf 'ul madlarah*" (*attracts benefits and rejects harm*). Where according to Hasbi the first balance sheet is: "*The purpose of reforming the Law is to preserve the common good and common welfare*". where maintaining public benefit and virtue is carried out with two legal efforts:

First: "rejecting the harm that befalls mankind in general and Muslims in particular," *Second*: "Bringing benefits that produce general welfare for all mankind

¹⁷ *Op.Cit*, h.312-313.

¹⁸ M. Hasbi Ash-Shiddieqy, *The principles of Imam Madhhab's position in building Islamic law*, (Jakarta, Bulan Bintang, 1989), p.101.

¹⁹ Hasbi. *Op.Cit*, h.105.

in general and for Muslims in particular".From these two things the conclusion emerged: "Resisting damage must take precedence over bringing benefits."

Second balance sheet: "Creating the common good by relying on two joints of morality namely: fair and Hak (justice and truth)²⁰

These are briefly Hasbi Ash-Shiddieqy's legal thoughts regarding the principle of expediency in law, especially Islamic law, which is the basis for the compilation of Islamic law in Indonesia.

CONCLUSION

Hasbi Ash-Shiddieqy as a reformist figure, especially in the field of Islamic Law, became a figure who contributed his thoughts in the process of indigenization of Islamic law which ultimately led to the process of compiling Islamic Law in Indonesia. Hasbi's thoughts in the field of benefit are based on: Istihsan, Saddudz Dzari'ah and benefit.

Istihsan develops the selection process of legal causes in the aspect of bringing good to human life, Saddudz Dzari'ah develops legal consideration in the process of rejecting something that is harmful to human life, while the legal question of considering benefits is "*Resisting damage must take precedence over bringing benefits.*"

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