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LAW POLITICS IN SHARIA PERSPECTIVE

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Abstract

Purpose: Law politics is an attempt to create regulations in line with the circumstances and the situation at a time, becoming law politics is a step for the government to establish a legal system to achieve state goal. The scope of political law can't be separated from other policies. The preparation of law politics must always be sought along with aspects of policies in the field of economy, politic, social, culture, technology and so on and political law as the direction of law development policy of a country and political law is defined as a relationship of mutual influence between law and politic. Political law in shariah perspective can be understood from the text of holy Al-Qur'an, An-Nisa (women) verse 58-59 namely trustworthy and ulil amri (government) namely ulil amri is responsible for the politics of law on its territory. In the development of siyasah Syar'iyah included in the law political science taqin al Ahkam namely knowledge about the ways Islamic sharia into law. In understanding the scholars that Islamic Sharia law in the political is permitted to benefit the people but still may not be contrary to the Islamic sharia.

Methodology: The method used in this study qualitatively with data sources consisting of secondary data, namely the results of literature studies and search for documents and articles in the media.

Main Findings: Law Politics is an attempt to create regulations appropriate to the circumstances and the situation at a time, making the law a step politically for the government to establish a legal system in order to achieve state goals.

Implications/Applications: The scope of Law politics is that law politics cannot be separated from other policies in the field. Preparation of law politics must always be sought along with aspects of policies in the field of economy, politics, social, culture, technology, and so on and law Politics as the direction of a country's legal development policy and the law Politics is defined as the relationship of mutual influence between law and politics.

Keywords: Law, Politics, Sharia, Islamic.

INTRODUCTION

Law Politics, placing the law as a tool to achieve goal state. This means that effective law is enacted by the state as a tool to achieve its objectives. Therefore, politic of law is also used as a tool to shape the law, in order to create a new law, as well as replace and / or change the old law. The established law is then politically acknowledged and applied to the public. Thus, law politics is defined as an attempt to realize the rules both in accordance with the circumstances and situations at a time, making the legal law a step for the government to establish a legal system in order to achieve state goal.

This is interesting to study. Law politics is more formal in official policy, law politics includes official policy and its relation to other matters. As a study of the political development of law, the study of law politics has a certain coverage, namely:

1. The country policy of the law will be enforced.
2. Background of the birth of a legal product.
3. Law enforcement.

Law politics is the political aspects underlying legal-making process and a particular policy field, as well as will greatly affect the performance of relevant governmental institutions in the field in applying the provisions of legal and policy products, and also in determining the policies of these institutions in a practical and operational level. Such an important role of law politics, so it can determine the alignment of a product law and policy.

There are at least three relationships between law and Politic, first; the law of determinant over politic, namely that political activities are governed by and subject to the law. This assumption is used as the basis of those who see law from the point of *das sollen* (desire, necessity, ideals) or idealists who hold on to the view that law should be a guide in all activities among members of society including in all political activities. Second; determinant politic of the Law, namely that the law is the result or crystallization of political wills that interact and even compete each other. this assumption is used as the basis of those who see the law from the standpoint of *das sein* (reality) or the adherents of empiricism, who see the product of law is strongly influenced by politic. Third; Politic and Law as a social subsystem are in a balanced position, because although the law is a product of a political decision but as the law exists then all political activities must be subject to the law.

Law Politics

Law politics is etymologically a translation of the Indonesian language derived from the Dutch legal term *rechtpolitiek*,



¹ *recht* in the Indonesian language means law. The word law comes from the Arabic *hukm*, the plural of *ahkam*, which means decisions, decrees, orders, government, power, punishment (Wehr, 1980: 196). The verb, *hukama-yahkum* means to decide, to judge, to set, to order, to order, to punish, to control. The origin of the word *hakama* means controlling with one control (Al-Ashfahani, 1995: 126). While *politic* in the dictionary of the Dutch language means the policy (Moten, 2001: 20).

According to the term that conveyed by the Indonesian expert of legal law Bintan Regen Saragih that the law politics is the policy which taken by the state through institutions or officials to establish the law that needs to be replaced or that needs to be changed or the law that needs to be defended, or law concerning what needs to be regulated or issued so that the policy of the administration of the state and government can proceed well and orderly so that the goals of the state (such as the welfare of the people, the enforcement of justice) gradually and plan can be realized (Saragih, 2006: 17). The meaning of law here is the law of state product (positive law of the term in Indonesia), Politics and law in this sense, can't be separated like a single coin. This kind of understanding is generally embraced by constitutional democracies or a democratic constitutional state because there is a state or government that adopts a policy to establish the law so that by law the power can be maintained or power can be concentrated on the ruling class. Policies are taken for various reasons, for example for the sake of development, for the sake of the people, for national stability and so on, while the real purpose of the state is neglected. This kind of law politics is usually applied by the state of power (*machtstaat*) to the type of oligarchy, absolute, authoritarian rule.

The historical root of the emergence of law politics is that the ages of law study had been ranging from ancient Greece to modern times today. During that time legal studies have experienced ups and downs, development and shift in the methodology of its approach. The ups and downs of the development of the law can't be separated from changes in social structure due to modernization of industrialization, economy, politics, software development. Raharjo (2002: 33) describes the development of law, where the 19th century in Europe and the United States, the individual is the center of legal arrangement, while the legal entity / legal institution that developed is a civil legal entity. Legal expertise is associated with technical skills or craftsmanship expertise (ready to work). When the study of law can be studied from its own laws, the law does not require assistance and cooperation with other disciplines. The legal approach through multi-discipline has spawned a variety of legal disciplines in addition to Philosophy of law and science of law, as well as legal theory/theory of law, history of law, sociology of law, anthropology of law, Comparative of law, psychology of law and now Politic of law. Law is a very complex entity, covering the reality of a plural society, has many aspects, dimensions and phases. Law is formed in the interaction of various aspects of society (politics, economy, social, culture, technology, religious and so on). If the law is only studied as chapters and removed from the study of the norms and aspects that affect it can cause us to be frustrated and prolonged disappointed. When power affects judicial decisions (judges), when the Parliament with the articles of the Bill according to the interests of their party (not for the people) at that time the law has devoted itself to politics.

The relationship between politics and law is that law as a legal policy which has been, will or has been implemented by the government includes also the understanding of how politics influences the law by looking at the configuration of the forces behind the making and enforcement of the law. How about the relation of causality, does the law affect politics or politics that affect the law? The answer is: The answer is: (1) The determinant law of politics in the sense that political activities are governed and subject to the rules of law (those who regard the law as the *das sollen* (necessity) of the idealists). (2) The determinant politics of the law, the result of crystallization of a political will that is mutually integrated and competitive. They see the law as *das sein*, the empiricist and the view of reality. (3). Politics and law as a social subsystem are in a balanced position and degree of determinant, despite the law is product of politics but if laws exist, politics must be subject to the law.

In legal politics, there are two variables, namely the dependent variable (law) and influential variable (politics). In the study of law politics, we do not see the law of *ansich das sollen* but also *das sein*. The basic assumption here is "law is a product of politics". In looking at the relationship between the two, the law as dependent variable and politics as an influential variable (independent variable). Law is influenced by politics or determinant politics of the law is easy to understand and the reality too because the law is a crystallization of the political will that integrate each other in the decision-making environment (Mahfud, 2010, Husen & Hufon, 2008: 24).

The scope of Law Politics is that legal politics cannot be separated from policies in other fields. The preparation of law politics should always be pursued in line with policy aspects of economic, political, social, cultural, technological and other policies. The scope of law politics can be understood in two senses: (1) Law Politics as the direction of a country's legal development policy, it includes the legal policy which has been, is and will be done by a country. (2) Law Politics is defined as the relationship of mutual influence between law and politics. There are two main scopes in the direction of a country's legal development policy: First law formation politics is the policy concerned with the creation, renewal and development of law. It includes: (1) The statute formation policy. (2) The policy (formation) of jurisprudential law, jurisprudence is a source of law other than the law. (3) Policies against other unwritten rules are unwritten laws that grow and develop in the life of the community, which habits are maintained and defended in overcoming the faced problems. The second Law Enforcement Politics include: (1) Policies in the field of justice, in this case how the policy direction



1 towards the judiciary. (2) Policies in the field of legal services. In this case need legal services that quickly, easily, affordable by the community, transparent and accountable.

The five components of the policy formation direction will form a national legal system. The national law will function determined by the 5 factors that one with the other support each other and cannot be separated from each other. The five factors called the fixed legal conditions (*conditio sine quanon*) consist of:

1. Law Substance/material law (legal substance)
2. Law culture (legal community awareness (legal culture)
3. Law enforcement officials (legal apparatus)
4. Facilities and infrastructure (equipment)
5. Law education (legal education)

The main sphere of law development policy direction (policy of legislation / written law and law enforcement policy) can only be distinguished and inseparable. Both are interconnected and function as a system, where the other sub-system is an integral unity and interconnected as a totality (Syaukani & Thohari, 2013).

Law politics is part of the science of law, as one part of the legal jurisprudence of law politics studies is *conditio sine quanon* for a complete law science study. The law science that examines the *das sein* relationship to *das sollen* is law politics. The law science that examines the content and meaning of *das sollen* is dogmatic of the law. The science that examines the relationship of *das sein* and *das sollen* is the application of the law. Law politics in examining the relationship of *das sein* and *das sollen* by reviewing two things namely the state and thoughts of society which raises the provisions of law and the state or community thinking that gives rise to legal provisions (Latif & Ali, 2011).

Law politics in Sharia Perspective

Which became the basis of law politics in sharia perspective is the Qur'an letter al-Nisa verse 58-59:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ۝٥٨ يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأَطِيعُوا أَوْلِيَ الْأَمْرِ مِنْكُمْ فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ۝٥٩﴾

1 Translation:

58. Indeed, Allah orders you convey the message to those who deserve it, and (told you) if it establishes the law among men that you assign to the fair. Verily Allah gives his best teaching you. God is All-hearing, All-seeing.

59. Hai who believe, obey Allah and obey the Messenger (His), and ulil amri among you. then if you're different opinion about something, then give back it to Allah (the Qur'an) and Messenger (Sunnah), if you truly believe in Allah and the Last Day. such that (advantageous) and better in the end.

In the understanding of classical exegetes, as in the book of Al-Sanafi's interpretation, the verse above is understood by al-Sanafi that *Amrulwalah* (ruler or government as a politics product) are required to fulfill the mandate imposed on the government to enforce the law, uphold justice, the government must order to man to obey God and His messenger, if ye delivered differences of opinion it shall return Allah (Qur'an) and messenger (hadith), if ye believe in God, according to a tradition that no obedience to a creature in doing wrong deed (*maksiyat*) to the creator (Al-Sanafi, 1994: 229). While the interpretation of al-sam'ani mentioned that the scholars disagree about the interpretation of government (*ulil amri*), according to Jabir Ibn Abas and that the intent of *ulil amri* are the scholars and jurists, but according to Abi Hurairo that purpose of *ulil amri* is the Ruler and the master (Al-Sam'ani, 1997: 440).

According to Ismail Haqii in the Ruhulbayan's interpretation, he understood verse 58 of the mandate that the mission is divided into three, namely the first keeping mandated by God is to do worship by running all His commandments and keep away all His restrictions, the second maintains the mandate with the rest of God's creatures, and the third safeguard human mandate with himself (Haqii, 1992: 3). While in the understanding of the modern commentators, such as that delivered by Ibrahim al-Qathan in the book of *al-tafsir taisiru* (Al-Qathan, 2004: 304); the meaning of two verses are the first (vere 58) that the mandate is something that should be kept with the intention will convey it to the owner of mandate (*shahibul amanah*). *Amanah* is anything that it entrusts from a person from the treasure, the covenant, the secret and so forth, fair in conveying the right to the owner.

Allah describes about the instructions and lessons, compulsory mandate is as the basis of life in islamic society, then Allah Almighty sets two cases, namely to carry out its mandate and punish with justice among humans, he gave instruction (*isyarah*) in this case, in order to be utilized for clues to the future in the family's affairs, wealth and cannot give their rights except by fulfilling the mandate and justice. *Amanah* is a common phrase that covers all the rights as property issues, deeds (*amaliyah*), science, punish fairly in court when the problem is presented so with the mandate in order to avoid harming someone. While the second verse (verse 59) by Ibrahim al-Qathan that after Allah The AlMighty explains about the principles that must be upheld in life in an islamic way namely to fulfill the mandate and enforce the law fairly subsequent verse 59 is a constitution necessary for fair life, rule of law and the source of power, and it all start and end when obtained from Allah The Almighty back to Him in His book and then to the way of the prophet (*sunnah*) of His



Messenger, then fairness of *ulil amri* of moslems, this verse also describes the sources of the formation islamic law (*tasyri Islamiyya*), then when make laws (as a law politics product) or want to take legal source for Justice, then still have to go back to the Qur'an as the first source, if it's not found the source from the Qur'an, so it must back to the way of prophet (*The Sunnah*) as the second source, if it's not found again in the way of prophet (*The Sunnah*) as a source of law, *ijtihad* (an islamic legal term referring to independent reasoning or the thorough exertion of a jurist's mental faculty in finding a solution to a legal question) of *ulil Umri* (as a legal politics product), they make *ijtihad* to make a law that does not exist in the Qur'an and hadith, which became the legal basis is described with a hadith when Prophet sent Muadh bin Jabal to Yemen to be a Judge then the Messenger hold a competency test as a candidate for judge in Yemen with the question: with what you decide the case on the matter submitted to you, Muadh bin Jabal Responding to the Qur'an, if it is not found in the Qur'an about the handled case law, Muadh bin Jabal Answering by hadith, If it is not found in the hadith about the handled case law, Muadh bin Jabal Answering by *ijtihad* of my opinion, then The Prophet set him as the judges in Yemen (Al-Qathan, 2004: 306).

In Al-Marahgy and Al-Stani's (1984: 73) understanding about God's word mentioned above in Tafsir al-Maraghi' commentary, that the legal basis of Islamic rule (law politics in the Islamic Government) is¹

1. Al-Qur'an which is the first legal basis for the practice of obedience to Allah.
2. *Sunnah* of the Prophet as the second legal basis that its practice is obedience to the Prophet.
3. *Ijma ulil amri* as the third legal basis, *ijma ulil amri*, namely *ahlul Hali wal aqdi* that is trusted by the people. They are the scholars, the army commanders, general benefits (*maslahat*) leaders, the party leader, president, and chief editor of the newspaper, adherence to them is obedience to *ulil amri*.
4. The legal basis of the fourth is to examine debated issues to the rules and general's laws known in the *Qur'an* and *Sunnah*.

Law politics in the study of *Siyasah Syar'iyah* contained in *taqin al-Ahkam*. *Taqin* linguistically is derived from the Arabic root word of '*qonana*' with the meaning of "وضع القوانين" (putting legislation) (Al-jar'ii, 2005: 1), word *taqin* (تقنين) is a form of *qannana masdar* (قنن), which means shaping legislation. Ibn Mandzur *taqin* states that the word *taqin* does not come from Arabic, this word is the uptake from the Roman namely *Conan*, but some opinions are derived from Persian (Mandzur, 1997: 351). *Taqin* is commensurate with word *Qanun*, which means the size of everything, and it also means path or way (*tariqa*) (Mustafaf, 1991: 763), while in terms *taqin* is formulation of laws in the form of legal material, structured with qualified numbers as law modern on civil law, criminal law, administrative law and so on. So it becomes an easy reference to check, this can facilitate the needs of judges and be a reference for lawyers and on the basis of agreement resident / societies, *taqin al-ahkam* means collecting the laws and rules of law-making (*tasyri*) issues related to social relationships, arrange it systematically, and express it with express, concise, and clear sentences in the form of chapters, chapters, and or verses that have numbers in order, then set them as laws or regulations, then approved by the government, so it shall apply the law enforcement in the community (Az-Zarqa, 1997: 313).

The *taqin* definition contains elements that relate to *taqin*, namely:

1. Formulation, which is characteristic of *taqin* of recorded *fiqh*.
2. Arrangement and numbering, which is another feature that is used as a reference for the laws to be easy.
3. Allah's Word *al-umara* explains the void of legal explanation and requires it to be behavior of the law.

Thus it can be concluded that *taqin* is legalization process of *fiqh* (law) of Islam through legal politics into valid legislation. Prophet Muhammad had set the Medina Charter that governs the life of the community, both between Muslims and non-Muslims. Medina charter is one form of *taqin* ever done by the reign of *Rasulullah Peace Upon Be Him* at that time. But despite the efforts of the *taqin*, the Prophet also opens the possibility of dissent among his companions. The Prophet's accommodative attitude to dissent can be found in the history of Islamic law.

In the course of the history of Islamic law further, the effort to unite society in one view of judgment is also spearheaded by Abdullah bin al-Muqaffa. Ironically, Ibn al-Muqaffa was later executed by ruler on charges of being a *zindiq* (Kasir, 1998: 384). At that time, he suggested to Abu Ja'far al-Mansur to establish *taqin* in a letter which he called *Risalah ash-Shahabah*. He proposed to the caliph to collect the laws of *fiqh* and required the judges to use them in deciding cases in a State.

The proposal of Ibn al-Muqaffa was then really followed up by al-Mansur. At that time, the caliph met Imam Malik, one of the great scholars of the time. The cleric asked by al-Mansur was asked to compile Islamic law. However, Imam Malik rejected the request and said, "The people are accustomed to various opinions. They heard many traditions and narrated many narrations. They take opinions that are directed to them and practice them even though they are also accustomed to dissent in the midst of the companions of the Prophet Muhammad. Forbidding them to believe what they believe is something dangerous. Let the community be what it is. Let every member of society choose a view that suits their condition (Adz-Dzahabi, 1991: 78).

In the last two centuries, among the Islamic world, there has been an attempt to do *taqin al-ahkam*. One of them is al-Fatawa al-Hindiyah compiled by Indian scholars. In the work, compiled by-laws relating to worship, sanctions (*uqubah*), and acts involving interaction and exchange among people such as sales and sureties (*mu'amalah*). In addition to al-Fatawa



² al-Hindiyah, there is also *al-Ahkam al-Adliyyah* which contains a number of laws on sale and purchase, indictment, and verdicts.

This compilation was ratified in 1869 by the Ottoman Caliphate and contained 1,851 problems which were generally based on the Hanafi school. This compilation was enforced in most Arab countries until the mid-10th century. Only this compilation was no longer sufficient for all the new problems arising in society. In subsequent developments, the compilation was later updated and incorporated in the effects of civil law.

In Saudi Arabia when ruled by King Abdul Aziz, Ahmad bin Abdullah al-Qari, head of the Supreme Court of Shari'ah in Mecca, also compiled a compilation of Islamic law based on the school of Ahmad ibn Hanbal. Al-Qari summarized the views of Imam Ahmad's law which came from his main works. This compilation contained a lot of it at that time to reject the compilation (al-Qaththan, 2004: 404).

Law Politics in View of the Scholars

According to Ibrahim Ibn Muhammad Ibn Ali in his book *Tubshiratu al-Hukam fi ushuli al-aqdhiyah wa manahi al-ahkam* (Ibn Ali, 1986: 153), argues that: It should be noted that actually the expansion of the laws of *shari'a* on legal politics is not contradictory to Islamic *shari'a* but must presents/ proves the arguments of *al-muqodamah* and so must also present/prove the rules of some direction.

First: in fact, the damage has been widely dispersed except in the first period, and such application to the difference of opinion concerning the law if not out of the law of *syarah* as a whole, because the word of the Holy Prophet that should not harm and leave the product of the law will bring danger and strengthen in such a case by bringing the passages to make a critical denial.

Second: The general interest, Imam Malik and most scholars argue that legal politics is the common good found in *syara* 'with the thought and abrogation and strengthened by the charity for the public interest of the companions *radhiyallah anhum*.

According to Audah (1997: 17) in his book *Al-Tasyri'ul-Janaa' i Muqorinan bi al-Islami al-wadh'i qoninin*, the fundamental difference between the Shari'ah and laws (legal politics product) are:

First, that the law is a product of human beings as a political product, whereas *shari'ah* is a product of Allah Almighty, every law and *shari'ah* within includes the clarity of the qualities that make, the law as the product of the man in it includes the deficiencies of human traits such as their inadequacies, their weaknesses and the least of their ways. Therefore, the existence of the law appears to be held for change, replacement or what we call evolution, Every time a group evolves to an unexpected or unpredictable case, the law always has a deficiency for eternity is not possible to the perfect degree because that makes it not perfect. The *shari'ah* that makes is Allah AlMighty, and the ability of the Creator and His perfection and greatness, and He is the creator of all that exists and then the *shari'ah* is written by the omnipotent Essence who knows the slightest things as well covering all the present and future cases so that His science encompasses all things and He commands His majesty so that they will not change and will not be replaced. Therefore, the *shari'ah* does not require change and change even though place, age, and man are always changing.

Second; legislation is a temporary rule set by a group to govern the affairs in bridging needs. They then make rules for the group, or are at the current group level, lagging behind the group tomorrow, because the legislation does not change rapidly the evolution of the group, which is consistent with temporary case rules, temporary groups, and requires changes whenever the group conditions change. The Shari'ah is the rule of God that is used forever to manage the affairs of the group is permanent and does not accept change and shift.

Third: Laws are made by a group, and they are colored by their own custom, tradition, history, and originally in laws that are placed to organize group, or to place to guide group, and then left behind by groups that follow the evolution of the law and laws are made by a group, not a law that creates a group. The Islamic Shari'a is not a group, nor the *natija* of a revolution like the man-made law on earth, but it is made by Allah Almighty.

Ibn Al-Jauziyah Qoyim in his book *al-Tharqu al-Hikmatu fi al-Siyasah al-Syar'iyah*, said that the law politics is what is done by human beings for the purpose of proximity to the kindness avoid damage although not exemplified by the Prophet and not down revelation to set them up with anything that is done for a political problem according to shari'a law because according to him that there was no political jurisdiction except in accordance with the Shari'ah, so this is done by the *khulafaurasyiddin*, and for the sake of the good of the people (Al-Jawziyah, 2002: 16).

CONCLUSION

1. Law Politics is an attempt to create regulations appropriate to the circumstances and the situation at a time, making the law a step politically for the government to establish a legal system in order to achieve state goals.
2. The scope of Law politics is that law politics cannot be separated from other policies in the field. Preparation of law politics must always be sought along with aspects of policies in the field of economy, politics, social, culture, technology, and so on and law Politics as the direction of a country's legal development policy and the law Politics is defined as the relationship of mutual influence between law and politics.



3. Law Politics in Perspective of Sharia law can be understood from the text of the letter al-Nisa 58-59 that is trustworthy and *ulil amri*, namely *ulil amri* is responsible for the law politics of its territory.
4. In the development of Syar'iyah siyasah, the law politics entry in *Ahkam taqinul* science is the science of the ways Islamic sharia into law.
5. In a political understanding of the scholars that Islamic sharia, law politics is allowed if it is to benefit the people but still may not be contrary to the Islamic sharia.

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