



## THE CONSTRUCTION OF INDONESIAN POLITICAL FIQH: MAQASID AL-SHARIAH PERSPECTIVE AND AHMAD AR-RAISUNI'S THOUGHTS

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DOI: 10.21154/justicia.v17i1.1671

Received: 27 June 2019

Revised: 15 Jan 2020

Approved: 28 April 2020

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**Abstract:** Some issues in various classical political fiqh literatures are irrelevant if applied in the current context. This paper discusses how important the reconstruction and renewal of several issues in classical political fiqh is adapted to the plural Indonesian context. In this study, the author uses the *Maqasid al-Shariah* theory and Ahmad ar-Raisuni's thinking which specifically addresses political issues as the main frame of analysis. By conducting a library study, this study concludes that several issues in classical political fiqh are indeed irrelevant to the times, and therefore need to be updated and reviewed. In additions, this study also has resulted in a new construction of Indonesian political fiqh which formulated in four crucial issues: democracy, state format, criteria for leaders in Indonesia, and application of Islamic Law (*Shariah*).

**Abstrak:** Beberapa isu dalam pelbagai literatur *Fiqh Siyāsah* klasik sudah tidak relevan jika diterapkan dalam konteks saat ini. Tulisan ini mendiskusikan bagaimana pentingnya melakukan rekonstruksi dan pembaruan terhadap beberapa isu dalam *Fiqh Siyāsah* klasik disesuaikan dengan konteks Indonesia yang plural. Dalam penelitian ini, penulis menggunakan teori *Maqāsid al-Shariah* dan pemikiran Ahmad ar-Raisuni yang secara spesifik membahas persoalan politik (*siyāsah*) sebagai pisau analisis utamanya. Dengan melakukan studi kepustakaan, kajian ini menghasilkan kesimpulan bahwa beberapa isu dalam literatur *Fiqh Siyāsah* klasik memang sudah tidak relevan dengan perkembangan zaman, dan sebab itu perlu dilakukan pembaruan dan tinjauan ulang. Selain itu, penelitian ini juga menghasilkan konstruksi baru Fikih Politik Indonesia yang dirumuskan dalam empat isu krusial: demokrasi, bentuk Negara, kriteria pemimpin di Indonesia, dan penerapan syariat Islam.

**Keywords:** *Reconstruction; Fiqh Al-Siyāsah; Maqāssid al-Sharī`ah; ar-Raisuni.*

### INTRODUCTION

Fiqh (Islamic jurisprudence) is one part of Islamic thought which occupies a significant position in the lives of Muslim communities. Because of its importance in Islamic studies, fiqh is dubbed "the queen of Islamic Studies".<sup>1</sup> It became a

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<sup>1</sup> Ahmad Imam Mawardi, "Fikih Mayoritas Versus Fikih Minoritas: Melacak Akar Konflik Sosial Atas Nama Syari'at," *Justicia Islamica*, 2016, <https://doi.org/10.21154/justicia.v9i2.348>.

fundamental reference in solving problems related to the legal dimension. For every problem that arises, its solution will be sought in the fiqh literature.

One of the issues discussed in fiqh is politics known as *Fiqh Al-Siyāsah*, or political fiqh. Political fiqh is an interesting discipline to study and discuss. The themes discussed in it, such as the relationship between religion and politics (*al-Dīn wa Al-Siyāsah*), leadership (*al-Imāmah*), state (*al-Daulah*), deliberation (*Shūrā*), democracy, and other themes, always provoke a long debate among Islamic jurists. The doctrines in classical political fiqh concerning these themes in the assumption of some people are no longer relevant to current development, including in the Indonesian context.

The question of leadership, for example, in the classical political fiqh is assumed to be the task of substituting prophethood, namely to safeguard religion and regulate the world's problems (الإمامة موضوعة لخلافة النبوة في حراسة الدين وسياسة الدنيا).<sup>2</sup> In this doctrine, a leader is given the burden of carrying out two tasks at once, as a religious leader and a leader of the state administration. Thus, it is not surprising if in terms of leadership, classical political fiqh gives very heavy criteria. The leadership requirements contained in the classical political fiqh doctrine are no longer relevant if applied in the current context, especially for the Indonesian context.

Actually, the idea of fiqh renewal, including *Fiqh Al-Siyāsah*, is not a new idea, especially in the Indonesian context. There are several figures who have offered the idea of fiqh renewal, including TM Hasbi Ash-Shiddieqy with the idea of "Indonesian Fiqh".<sup>3</sup> Munawir Sadzali once offered the idea of "Contejustualization of Islamic Law in Indonesia".<sup>4</sup> A. Qodry Azizy has the idea of "Positivation of Islamic Law in Indonesia".<sup>5</sup> In addition, efforts to reinterpret some of the doctrines in the classical *Fiqh Al-Siyāsah* have been done a lot. However, these reinterpretation efforts are more to be partial.<sup>6</sup> The study by the author tries to continue the idea of renewal that has been offered by the thinkers above. The scope of issues is expanded, not only discussing one particular issue *an sich*, but also *Maqāṣid al-Sharī'ah* as one of the analysis tools in discussing the issue.

<sup>2</sup> Abi al-Hasan Ali Ibn Muhammad Al-Mawardi, *Al-Aḥ Kām Al-Sultāniyah Wa Al-Wilāyat Ad-Dīniyah* (Kwait: Maktabah Ibn Qutaibah, 1989), 3.

<sup>3</sup> Mansur Mansur, "Kontekstualisasi Gagasan Fiqh Indonesia T.M. Hasbi Ash-Shiddieqy (Telaah Atas Pemikiran Kritis Yudian Wahyudi)," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 46, no. 1 (2012), 46-52.

<sup>4</sup> Sulthan Syahril, "Munawir Syadzali (Sejarah Pemikiran Dan Kontribusinya Bagi Perkembangan Pemikiran Islam Indonesia Kontemporer)," *Analisis : Jurnal Studi Keislaman* 11, no. 2 (2017): 219-40, <https://doi.org/10.42042/ANALISIS.V11I2.610>.

<sup>5</sup> Makhrus Munajat, "Transformasi Hukum Pidana Islam Dalam Tata Hukum Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* XIII, no. 1 (2019), 1-13 <https://doi.org/https://doi.org/10.24090/mnh.v0i1.2124>.

<sup>6</sup> Neneng Hasanah, "Syūrā Dan Fenomena Pemilihan Kepala Daerah Di Indonesia," *AHKAM : Jurnal Ilmu Syariah* 16, no. 2 (2016): 241-50, <https://doi.org/10.15408/ajis.v16i2.4454>.

Based on the above description, this paper will try to answer two important issues. **First**, what academic arguments can be put forward to strengthen the need for reform and review of several issues in classical political fiqh. **Secondly**, how the new construction of Indonesian-style political fiqh is, especially on the three crucial issues: democracy, the format of state, and the criteria for leaders in Indonesia.

To answer these two problems, the writer uses the analysis tool of *Maqāṣid al-Sharī'ah* and Ahmad ar-Raisuni's thoughts which specifically discuss political issues. This study is included in the category of literature study. The author's data is obtained from studying and analyzing several literature related to the theory of *Maqāṣid al-Sharī'ah* and some of ar-Raisuni's works that specifically address political issues. In analyzing data, the authors use the normative approach and *Maqāṣid al-Sharī'ah*. The purpose of this paper is to present academic arguments on the need to update and review several issues in the classical *Fiqh Al-Siyāsah*, as well as offering a new construction of Indonesian political fiqh that has Indonesian-nuanced character.

### **MAQĀṢID AL-SHARĪ'AH AS A PRINCIPLE IN ISLAM**

In principle, Islam was revealed to answer humanitarian problems and social problems that occur in society.<sup>7</sup> In addition, Islam also has fundamental purposes known as *Maqāṣid al-Sharī'ah*. It can be said that all the provisions of Allah aim to realize human benefit both in this world and the hereafter.<sup>8</sup> Thus, it can be understood that any rule in Islam must not leave the framework of *Maqāṣid al-Sharī'ah*. For this reason, in the process of extracting Islamic thought, there are certain rules and conditions that must be met so that the generated thought formulation does not leave the framework of *Maqāṣid al-Sharī'ah*.

Etymologically, the word "*Maqāṣid*" is a plural form of the word "*Maqṣid*" which means going to something. Terminologically, there are various definitions put forward by experts. Ibnu 'Asyur defines *Maqāṣid* as the general goals and the deepest meaning contained in various legal rules (*tashrī'*).<sup>9</sup> While al-Fasi defines *Maqāṣid* as the purposes and secrets that God put behind all the legal provisions revealed by Him.<sup>10</sup> Meanwhile, *al-Sharī'ah* from linguistic perspective contains two meanings, namely the straight path (*al-ṭarīqah al-Mustaqīmah*) and waterways.<sup>11</sup>

<sup>7</sup> Abid Rohmanu, "Khaled Abou el-Fadl dan Orientasi Humanistik dalam Studi Fiqh," *Justicia Islamica* XIII, no. 2 (2011). DOI: 10.21154/justicia.v8i2.531.

<sup>8</sup> Mohammad Hashim Kamali, "Goals and Purposes Maqasid Al-Shariah Methodological Perspectives," in *The Objectives of Islamic Law the Promises and Challenges of the Maqasid Al-Sharia*, ed. Muna Tatari Idris Nessery, Rume Ahmed (London: Lexington Books, 2018), 7-10.

<sup>9</sup> Ismail Hasani, *Nadzariyyah Al-Maqāṣid 'inda Al-Imām Muḥammad Ṭāhir Bin 'Asyūr* (Virginia: Al-Ma'had al-'Alami li al-Fikr al-Islami, 1995), 117-118.

<sup>10</sup> 'Allal Al-Fasi, *Maqāṣid Al-Sharī'ah Al-Islāmiyah Wa Makārimuha* (Maroko: Maktabah Wahdah, n.d.), 3.

<sup>11</sup> Aji Damanuri, "Shariah Sebagai Metodologi Problem Solver : Catatan Atas Pemikiran Ziauddin Sardar,"

Terminologically, *al-Shari'ah* is interpreted as all the rules of God established for his servants, both concerning beliefs, worship, morals, social relation, and other order of life with its various branches, with the aim to realize the happiness of the world and the hereafter.<sup>12</sup>

The word *maṣlahah* comes from the root *ṣaluḥa* which means good. In practical terms, *maṣlahah* can be interpreted as the nature of an action that can lead to goodness and usefulness.<sup>13</sup> On the contrary, the word *mafsadah*, the opposite of *maṣlahah*, is the trait of an action that can lead to damage and danger.<sup>14</sup> According to Al-Ghazali, what is meant by *maṣlahah* is to keep the purpose of the Shari'a maker (*al-Shāri'*). There are five things which meant by *al-Shāri'*, namely maintaining religion, soul, reason, descent, and property. Everything that contains protection and preservation of these five aspects is called *maṣlahah*. On the contrary, anything that can threaten these five aspects is called *mafsadah*.

Basically, the issues of *maṣlahah* and *mafsadah* are more to be subjective in nature. Because, based on the original meaning, *maṣlahah* means bringing benefit and rejecting harm. Assumption like this, according to Al-Ghazali, is also a goal desired by humans. At the same time, human desire can not be used as a standard in measuring something considered to contain benefit or not.

In order to avoid misuse of the concepts of *maṣlahah* and *mafsadah* wildly, Islamic legal experts made standardization of *maṣlahah* into three levels: *ḍarūriyyāt*, *ḥājjiyyāt*, and *taḥsīniyyāt*. *Maṣlahah ḍarūriyyah* is the highest level of the benefit sequence. This benefit is primary because the continuity of human life depends on it. If the primary benefit is not realized, then human life will be ruined.<sup>15</sup>

*Maṣlahah ḥājjiyyah* is benefit which is below the primary level. This secondary benefit includes the needs of humans to reach ease and not get caught up in difficulties (*al-Mashaqqah*).<sup>16</sup> If the secondary benefit is not fulfilled, humans do not fall into a state of danger as contained in the first benefit.

Meanwhile, *maṣlahah taḥsīniyyah* is the benefit associated with daily ethics. The absence of *maṣlahah taḥsīniyyah* will not cause destruction to human life as it is contained in *ḍarūriyyāt*, and also does not cause difficulties as contained in *ḥājjiyyāt*. However, even this benefit is tertiary in nature, it does not mean its existence is not important.

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*Justicia Islamica* 10, no. 1 (2013), <https://doi.org/10.21154/justicia.v10i1.141>.

<sup>12</sup> M.N. Harisudin, "Risalah Fiqh Wanita: Pemikiran Fiqh Perempuan Progresif KH. Muchith Muzadi," *Justicia Islamica* 10, no. 1 (2013), <https://doi.org/10.21154/justicia.v10i1.146>.

<sup>13</sup> Felicitas Opwis, "Maslahah in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005): 182-223.

<sup>14</sup> Ahmad Ar-Raisuni, *Muḥāḍarāt Fi Maqāṣid Al-Sharīah* (Cairo: Dar al-Kalimah, 2014), 126.

<sup>15</sup> Abdul Wahhab Khalaf, *Ilmu Uṣūl Al-Fiqh Wa Khulāṣah Al-Tasyrīh Al-Islāmiy* (Beirut: Dar al-Fikr al-'Arabi, n.d.), 188.

<sup>16</sup> Duski Ibrahim, *Metode Penetapan Hukum Islam Membongkar Konsep Istiqra' Ma'nawi Asy-Syatibi* (Yogyakarta: Ar-Ruz Media, 2008), 208.

## AHMAD AR-RAISUNI AND HIS THOUGHTS ON POLITICAL FIQH

Ahmad ar-Raisuni is a Muslim intellectual born in Morocco, in 1953 AD, coinciding with 1372 H. Raisuni's intellectual odyssey was formed at Muhammad V University, Rabat, Morocco, precisely in the Faculty of Literature and Humanities (*Kulliyah al-Adab wa al-'Ulūm al-Insāniyyah*). He earned a bachelor's degree from the campus in 1986, three years later, earned a master's degree in *Maqāṣid al-Sharī'ah*. In 1992, in the same place, ar-Raisuni won the title of Doctor of Ushul Fiqh, with the title of Dissertation, *Nazariyyah al-Maqāṣid 'inda al-Imām al-Syātibiy*.

Besides being active as an academic, ar-Raisuni is also active in various scientific organizations, including *al-Ittiḥād al-'Ālamī li 'Ulamā' al-Muslimīn*. Ar-Raisuni has produced many works in Islamic law and *Maqāṣid al-Sharī'ah*. Among the works that have been produced are, *Nazariyyah al-Maqāṣid 'inda al-Imām al-Syātibiy*, *Min A'lām al-Fikr al-Maqāṣidiy*, *Madkhal ila Maqāṣid al-Sharī'ah*, *Al-Fikr al-Maqāṣidiy: Qawā'iduhu wa Fawā'iduhu*, *Al-Ijtihād: al-Naṣ wa al-Maṣlaḥah wa al-Wāqi'*, *Al-Shūra fi Ma'rakah al-Binā'*, *Al-Ta'addud al-Tadzīmiy li al-Ḥarakah al-Islāmiyyah: Mā lahu wa Mā 'alaihi*, *Al-Kulliyah al-Asāsīyyah li al-Sharī'ah al-Islāmiyyah*, *Muḥāḍarāt fi Maqāṣid al-Sharī'ah*, *Al-Fikr al-Islāmiy wa Qaḍāyānā al-Siyāsiyyah al-Mu'āṣirah*, *Fiqh al-Ṣaurah: Murāja'āt fi al-Fiqh al-Siyāsiy al-Islāmiy*, *Al-Qawā'id al-Asās li 'Ilmi Maqāṣid al-Sharī'ah*, and *Al-Jam'u wa al-Taṣnīf li Maqāṣid al-Syar' al-Hanīf*.

The term political fiqh, in this paper, is a translation of the term *Fiqh Al-Siyāsah*. The term *Fiqh Al-Siyāsah* itself consists of a composition of two words: *al-Fiqh* and *Al-Siyāsah*. Etymologically, the word *al-Fiqh* means understanding (*al-Fahmu*). Terminologically, *al-Fiqh* means the knowledge of the laws of Sharia which are practical, taken from detailed proofs (*daleel*).<sup>17</sup> Thus, *al-Fiqh* is essentially the result of thought obtained from the thought process termed as *ijtihad*.

The word *Siyāsah* comes from Arabic which means to regulate something.<sup>18</sup> Terminologically, the word *Siyāsah* is interpreted as an effort to improve and manage the affairs of the people.<sup>19</sup> The word *Siyāsah* is also interpreted as laws governing the affairs of the state and society (*ummah*), by adhering to the spirit of the Sharia and universal principles in the religion, although there is no specific proof that discusses the laws.<sup>20</sup> From these mentioned definitions, it can be understood that the full definition of *Fiqh Al-Siyāsah* is a deep understanding of the affairs of the Ummah, both internal and external, as well as regulating and maintaining these affairs in accordance with Sharia laws.

<sup>17</sup> Abdul Wahab Abd. Muhaimin, "Aktualisasi Syariah dan Fikih Dalam Menyelesaikan Pelbagai Persoalan Hukum," *Ahkam* XV, no. 2 (2015): 241-48.

<sup>18</sup> Khalid ibn Ali Ibn Muhammad Al-Anbari, *Fiqh Al-Siyāsah Al-Syar'iyyah* (Egypt: Dar al-Minhaj, 2004), 9.

<sup>19</sup> Muhammad Ibn Husain Beirum, *Risālah Fi Al-Siyāsah Al-Shar'iyyah* (Dubai: Markaz Jumu'ah al-Majid, 2002), 121.

<sup>20</sup> Toha Ahmad Zayyadi, *Al-Marji'iyah Fi D]aui as-Siyāsah Al-Syar'iyyah* (Oman: Dar an-Nafais, 2014), 23.

Ar-Raisuni's thoughts about political fiqh depart from the basic construction that some issues in classical political fiqh need to be renewed and reviewed. The idea of renewal of classical political fiqh opens with a general explanation of how fiqh is processed. Fiqh, according to ar-Raisuni is a product of human thought, the result of a combination of understanding of reason to revelation, as well as the reality around it. In this understanding, fiqh is formed because of three elements: the revelation, the event, and the person who understands the revelation (*faqīh*).<sup>21</sup>

The revelations of Allah manifested in the Qur'an and the hadith of the Prophet are absolute, *ma'ṣūm*, guaranteed authority. As for understanding of the revelation, of course it is different from the revelation itself. Understanding of the revelation is an activity of human thought that may be wrong and may be right. Moreover, the quality of understanding from one another can differ, depending on intellectual capacity and methodology used.<sup>22</sup> On that basis, it can be understood that fiqh is a product of thought that is relative in nature, so updating and reviewing it is a necessity that needs to be done continuously. The review is very important because the problems that occur in Islamic law are increasingly developing. If fiqh in general requires an update and review, then this also applies to one of its derivatives, namely *Fiqh Al-Siyāsah* or political fiqh.

In addition, the proofs which talk about political issues, according to ar-Raisuni, are very few. The scarceness of proofs which specifically address political issues provides an opportunity to always present a new understanding that is more suited to a particular situation and condition. Generally, the proofs related to political matters are universal, such as orders to do justice, deliberation, good deeds, and trustworthiness, also to keep promises, and to hold other principles.<sup>23</sup> Ar-Raisuni also built his argument by quoting the opinion of Imam Haramain al-Juwaini who states that, the issue of leadership (in politics) is not included in the issue of certainty (*Qat'ī*) and its truth is not at the level of confidence (*al-yaqīn*).<sup>24</sup>

Based on the arguments above, ar-Raisuni concludes that a continuous review and new *ijtihad* in the field of political fiqh is mandatory and not prohibited. The review is carried out so that the discourses in it can be relevant to the times. Ar-Raisuni adds that if a review is not carried out, the jurisprudence will cause a very difficult situation (*al-Ḥaraj kulla al-ḥaraj idzā lam naf'al*).<sup>25</sup> The reason why ar-Raisuni states that if a review is not conducted this will cause difficulties, is because the problems faced today are very different from what happened in

<sup>21</sup> Ahmad Ar-Raisuni, *Fiqh Al-Ṣaurah Murâja'ât Fi Al-Fiqh Al-Siyâsiy Al-Islâmiy* (Cairo: Dar al-Kalimah, 2013), 11.

<sup>22</sup> Ar-Raisuni, 11.

<sup>23</sup> Ar-Raisuni, 12.

<sup>24</sup> Ar-Raisuni, 13.

<sup>25</sup> Ar-Raisuni, 13.

the past. The concepts offered in the past are not all suitable when applied in the current context.

At least, there are five crucial issues in political fiqh that are specifically discussed by ar-Raisuni in his various works. **First**, about the relationship between religion and politics. The issue about the relationship between religion and politics is not a new issue. There are several views regarding this issue, depending on the perspective used. In the matter of the relationship between religion and politics, ar-Raisuni chose the middle way. Both religion and politics are inseparable unlike the secularists believe. The relationship between religion and politics is like the relationship between humans and doctors.<sup>26</sup> Politics needs religion to control and to keep it in line with the spirit outlined in religious doctrines. However, the control here does not mean the same as what the bearers of the idea of the full integration of religion and politics want like Islamist-formalists believe.

**Second**, between *shūrā* and democracy. The discourse of *shūrā* and democracy has colored much debate among scholars, especially in the study of Islamic political science.<sup>27</sup> Usually, the focus of the debate is the relationship and differences between the two. While *shūrā* is associated with Islam, democracy is considered a western product. In other words, while *shūrā* is a religious teaching, democracy is a secular doctrine that is not in accordance with religious teachings. In fact, there are groups that have understanding that *shūrā* is the only system that complies with Sharia principles. These groups believe that a system other than *shūrā*, including democracy, is an unlawful infidel system for Muslims. In Indonesia, this understanding is voiced by Hizbut Tahrir Indonesia (HTI).

Operationally, *shūrā* can be defined as an activity of exchanging thoughts, ideas or opinions, in order to solve a problem.<sup>28</sup> From this definition, it can be understood that *shūrā* is a mechanism in finding and making decisions made by selected people with certain qualifications. On the other side, democracy comes from the Greek term “demos” which means society, and “krattio” which means government.<sup>29</sup> The term democracy has various definitions. Sometimes, democracy is interpreted as power in the hands of people or governance by and for the majority.<sup>30</sup> According to F. Budi Hardiman, the notion of democracy as power in the hands of people is a classic understanding that has weaknesses in

<sup>26</sup> Ahmad Ar-Raisuni, *Al-Fikr Al-Islâmiy Wa Qadâyânâ Al-Siyâsiyyah Al-Mu`âs}irah* (Cairo: Dar al-Kalimah, 2013), 32.

<sup>27</sup> Uriya Shavit, “Is Shura a Muslim Form of Democracy? Roots and Systemization of a Polemic,” *Middle Eastern Studies* 46, no. 3 (2010).

<sup>28</sup> Lukman Santoso, “Eksistensi Prinsip Syura Dalam Konstitusional Islam,” *Jurnal In Right* 3, no. I (2013): 113-34.

<sup>29</sup> Kiki Muhamad Hakiki, “Islam Dan Demokrasi : Pandangan Intelektual Muslim Dan Penerapannya di Indonesia,” *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* 1, no. 1 (2016): 1-17.

<sup>30</sup> Fuad Fachrudin, *Agama Dan Pendidikan Demokrasi* (Jakarta: Pustaka Alvabet, 2006), 25.

its operational processes. This weakness lies in the complexity of today's society which is different from society when the concept was formulated in the past.<sup>31</sup>

Based on the concepts of *shūrā* and democracy mentioned by the author above, it can be understood that if viewed from the surface, both of *shūrā* and the democracy do have very sharp differences. Thus, it is not surprising that there are groups like Hizbut Tahrir Indonesia (HTI) who have thought and understanding that *shūrā* is a genuine product of religion, while democracy is a western product that is not suitable for use as a system of state.

However, ar-Raisuni has a different thought. For ar-Raisuni, *shūrā* and democracy cannot be contested. Democracy is part of *shūrā* itself. Democracy is a medium (*wasīlah*) to arrange something, while *shūrā* includes creed, morals, and civilization (*thaqāfah*). Because democracy is part of *shūrā*, the two cannot be opposed to each other as understood by HTI or their likes. As a medium, its quality depends on the use of it. Simply put, if democracy is practiced correctly, it will bring benefits. So, whether good or not a medium is basically returned to its users.

Besides having a different thought in terms of the relationship between *shūrā* and democracy, ar-Raisuni also has a different outlook on the status of *shūrā* in Islam. For ar-Raisuni, *shūrā* is not a Sharia and is not the only system that is in accordance with Islam as understood by many people. *Shūrā* is not *ta'abbudiy* that can't be modified anymore. In this context, ar-Raisuni understands that *shūrā* is just one medium (*wasīlah*) from many and not the destination (*maqāṣid*) as some people understand.<sup>32</sup>

Ar-Raisuni's understanding of the status of *shūrā* which positions it as a medium, brings to a simple implication that *shūrā* is not a rigid system which cannot be changed or renewed as a praxis. To strengthen his argument, ar-Raisuni cites the opinion of Al-Qadi Ibn 'Atiyah al-Andalusi which states that *shūrā* is a basic principle of Sharia which its practices and applications can be adapted to the times.<sup>33</sup>

In addition, ar-Raisuni also rejects the assumption of some groups in Islam who consider that democracy cannot be accepted and applied in Islam. Usually, the proponents of this idea build their arguments on two main foundations. *First*, judging by its origin. Democracy is considered not from Islam and is associated with western traditions. *Secondly*, democracy is conceived as a system that embraces unlimited freedom. This freedom equates knowledgeable people and not; both are given equal rights. In addition, the system based on majority

<sup>31</sup> F. Budi Hardiman, *Demokrasi Deliberatif* (Yogyakarta: Kanisius, 2009), 125.

<sup>32</sup> Ahmad Ar-Raisuni, *Al-Fikr Al-Maqāṣidī Qawwâ'iduhu Wa Fawâ'iduhu* (Rabath: Dar al-Baido', 1999), 132.

<sup>33</sup> Ar-Raisuni, *Al-Fikr Al-Islâmiy Wa Qadâyânâ Al-Siyâsiyyah Al-Mu`âṣirah*, 78-79.

in democracy is able to generate decisions that are outside the bounds; making *halal* something that is *haram*, and vice versa.<sup>34</sup>

The two arguments against democracy above are refuted by ar-Raisuni. *First*, democracy does not have a certain religion or identity. Although historically democracy was born in Greece, the practice of democracy has existed since the civilization of human life began. In fact, the Jahiliyyah Arabs have practiced the principles of *shūrā* and democracy.<sup>35</sup> *Second*, the concern that democracy will produce free decisions without limits is something that is exaggerated. In the practice of democracy applied in various Muslim majority countries for example, decision making based on majority has long been practiced, even by the Prophet himself.<sup>36</sup>

*Third*, the concept of state. In the matter of state, according to ar-Raisuni, Islam does not rigidly regulate the format how a state must be. Islam only provides basic standards that are universal (*al-Mabadi 'al-'Ammah*). These standards can be used as a basis in formulating rules and technical matters relating to political issues, including in the matter of the format of state. Because they are universal, these basic standards can be applied anywhere and anytime. In applying these basic standards, to know the characteristics of a place and its people is a must.<sup>37</sup> By knowing the characteristics of a place and its society, the formulation of rules and technical implementation can be adjusted to the needs and most importantly not contrary to religion.

Ar-Raisuni emphasizes that Islam never give a specific description of what the format of state should be. Even in the two primary sources, there are no provisions that clearly indicate the format of state. In fact, the application of *al-Khilāfah ar-Rasyīdah* in historical fact varies, from the time of Abu Bakr to Ali. *Khilāfah* and *Khalīfah* are only technical terms that are historical and not principle that cannot be changed. The terms are almost the same as other technical terms such as *al-Imāmah* and *al-Imām*, *al-Imārah* and *al-Amīr*, *ar-Riāsah* and *al-Raīs*, and *Amīrul Mu'minīn* and *Amīrul Muslimīn*.<sup>38</sup>

Islamic history records that there are many phases of government and power that have existed and colored the lives of Muslim societies. Each of these power phases has different characteristics that differ from those of another. It needs to be understood that the history of power in Islam, not all filled with things that are Islamic, but in its history there is also a dark stain of power, from killing each other to getting rid of each other.

<sup>34</sup> Ar-Raisuni, 79-80.

<sup>35</sup> Ahmad Ar-Raisuni, *Al-Ummah Hiya Al-Aşlu Muqārabah Ta`şliyyah Li Qadāyā Dimaqrāṭiyyah* (Beirut: al-Syabkah al-'Arabiyah li al-Abhas wa al-Nasyr, 2012), 44-46.

<sup>36</sup> Ar-Raisuni, *Al-Fikr Al-Islāmiy Wa Qadāyānā Al-Siyāsiyyah Al-Mu`āşirah*, 87-90.

<sup>37</sup> Ar-Raisuni, *Al-Fikr Al-Maqāşidī Qawā`iduhu Wa Fawā'iduhu*, 126.

<sup>38</sup> Ar-Raisuni, *Fiqh Al-Şaurah Murāja`ât Fi Al-Fiqh Al-Siyāsiy Al-Islāmiy*, 83-84.

If Islam does not provide detailed and rigid rules regarding political issues, including the question of the format of state, is there a benchmark that can be used to see whether a country is Islamic or not? A state, whatever its format, when applying universal principles (*al-Mabādi` al-`Āmmah*), can be called Islamic. These universal principles are deliberation, following the general principles of Sharia (*Maqāṣid al-Sharī`ah*), upholding justice among people, and conformity of all policies of leaders to realize benefit.<sup>39</sup>

A state, be it a republic, kingdom, or caliphate, as long as applying the universal principles above, any format of it is acceptable and Muslims must love and defend it, including submitting to its leaders. Thus, as long as a state gives freedom to carry out religious rites and policies taken are aiming at realizing benefit and not castrating Muslims, it is *haram* to rebel and campaign for resistance, let alone to spread propaganda that the state is not in accordance with religious teachings.

**Fourth**, about leadership. Ar-Raisuni does not provide rigid technical terms in leadership issues. Leaders, whatever they are called, can be accepted if in their leadership they can realize justice and benefit. Ar-Raisuni divides leaders into two: the straight leader (*al-Ḥākim ar-Rāsyid*) and the broken leader (*al-Ḥākim al-Fāsid*). Each of the two has his own criteria.

A leader is called straight if he is legally elected and in his policy applies the principle of deliberation and is oriented towards the general benefit. Conversely, a leader is considered broken if in his policy is authoritarian, forcing others to follow him. His main orientation is not the general benefit, but the benefit of his self and his group.

The division of leaders into two by ar-Raisuni shows that in matters of leadership, the benchmarks are morality and capability. A leader, who only has capability without good morals, usually takes policies which will only benefit him self and his groups. Contrary, if a leader only has good morals without having capability in managing a state, his policy is vulnerable to being used by his subordinates. A leader of this like usually will be easily exploited because he has no power.

**Fifth**, the application of Islamic law. The application of Islamic law becomes a central issue that is carried by groups who believe in the comprehensiveness of the Islamic teaching. Ar-Raisuni calls this group the political-dawah movement (*Ḥarakah al-Da`wah al-Siyāsiyyah*). This movement is called *da`wah* or missionary movement because this movement has a mission to spread understanding of Islamic comprehension (*shumūliyyah al-Islām*).<sup>40</sup> This group believes that Islam

<sup>39</sup> Ar-Raisuni, 84-87.

<sup>40</sup> Ahmad Ar-Raisuni, *Murāja'ât Wa Mudāfa'ât* (Cairo: Dar al-Kalimah, 2013), 13.

covers all aspects, creed-laws, worship-human interactions, and state-politics, with all the technical rules. Therefore, in their understanding, because Islam is so complete, there is no reason not to apply it in all dimensions of life.

According to ar-Raisuni there are weaknesses in the understanding adopted by this movement. Empirical practices show that what is believed by the proponents of Islamic comprehension is wrong. The idea is weak if it must be applied in different conditions of society as it is today.<sup>41</sup> If Islam is considered complete, the rules and technical implementations will be identical. In fact, the applications of Islamic teachings, especially in political matters and their instruments can differ from one region to another.

Differences in views that occur among Muslims regarding the issue of the application of Islamic law in the dimensions of life are due to differences in perspective in understanding the term "Sharia". For that reason, said ar-Raisuni, if someone wants to resolve this problem, understanding the term is the entrance that must be passed (*mafhum al-Shari'ah qabla Taḥbiq al-Shari'ah*).<sup>42</sup> The term "Sharia" refers to two meanings: broad and narrow. In a broad sense, some scholars understand Sharia as everything that is revealed by Allah, including aspects of belief (*aqidah*), religious rites (*ibadah*), and ethics (*adab*).<sup>43</sup> In a narrow sense, usually the term Sharia is only identified with legal issues alone.

The issue of Sharia application is narrowed down to the issue of applying criminal law (*jinayah*) alone. This raises a new problem that what is meant by Sharia is only things that are practical. In fact, Sharia is not just a matter of definitive punishment (*hudud*) only, but includes all aspects, including beliefs, morals, and other things that aim for human benefit.<sup>44</sup> Therefore, religious movements those have a mission to uphold Islamic law, but only focusing on criminal matters, have a problem with the root meaning of Sharia. Sharia is not only a matter of criminal law, but also a matter of creed and ethics.

## **FROM STATIC POLITICAL FIQH TO DYNAMIC POLITICAL FIQH**

From some of the issues that the author has discussed above, it can be understood that in Islam, political issues are not something rigid. Fiqh, including political fiqh, is a product of limited human thought. Fiqh is not a normative product which binds and forces it to be accepted.

In political matters, as explained in the previous discussion, Islam does not specifically regulate operational technical matters. Islam only gives a foundation

<sup>41</sup> Ar-Raisuni, 16.

<sup>42</sup> Ar-Raisuni, *Al-Fikr Al-Islamiy Wa Qadâyânâ Al-Siyâsiyyah Al-Mu`âsirah*, 91-98.

<sup>43</sup> Ahmad Ar-Raisuni, *Al-Kullîyyât Al-Asâsiyyah Li Al-Shari`ah Al-Islâmiyyah* (Cairo: Dar al-Kalimah, 2013), 21.

<sup>44</sup> Ar-Raisuni, *Murâja'ât Wa Mudâfa'ât*, 17-19.

in the form of basic principles (*al-Mabādi` al-`Ammah*) which must be used as a basis when formulating these technical matters. One example is the issue of the state format. Islam does not specifically regulate the format of state which must be applied in a region, whether it must be in the format of a republic, kingdom, or khilafah. Islam only gives general principles that must be used as a basis in choosing the desired form of state.

There are two main arguments why political fiqh is dynamic. *First*, the proofs related to this issue (politics) are very few in number. At least, the available proofs show that in political matters humans are given ample space to think and produce operational technical things that are in accordance with the challenges of their times. *Second*, legal provisions can change according to changes in space and time. In the study of Islamic law, differences in space and time can affect the legal provisions that must be applied. Except for things that are *ta`abbudiy*, what is applied in certain regions may be different in other regions. There are very many historical facts that indicate this issue.

However, it must be understood that even though political fiqh is dynamic, it does not mean that all the provisions contained in classical political fiqh can be modified at will. There are certain limitations that must be obeyed, namely that the general principles (*Maqāṣid al-Sharī`ah*) must be the reference and main foundation. Making *Maqāṣid al-Sharī`ah* as the reference is the main key to the process of renewal and modification of acceptable fiqh. *Maqāṣid al-Sharī`ah* is the main frame of every Islamic (legal) thought. Basically, Islamic (legal) thought that is in accordance with *Maqāṣid al-Sharī`ah* can be accepted and applied in daily life because it certainly contains benefits. Conversely, if opposite to *Maqāṣid al-Sharī`ah*, the results of this thought must be rejected because it certainly leads to destruction.

#### ISSUES OF INDONESIAN-NUANCED POLITICAL FIQH

In this discussion, the author will examine a number of issues in classical political fiqh that have been contextualized into the Indonesian context. In carrying out the process of contextualization, the writer borrows Ahmad ar-Raisuni's thoughts and the theory of *Maqāṣid al-Sharī`ah* as its foundation. Not all issues in the classical political fiqh literature are contextualized by the author. The author only chooses several issues which are widely discussed and debated in Indonesia. These issues are:

**First**, democracy as a state system. Indonesian-nuanced political fiqh does not dichotomize between *shūrā* and democracy. Both are not opposed to each other because democracy is part of *shūrā*. Both *shūrā* and democracy are means that have the same goal: to realize benefit and prosperity for the community. Thus, the application of democracy as a state system in Indonesia is in accordance

with the framework of *Maqāṣid al-Sharīʿah*. So, in addition to being guaranteed by applicable regulations, the application of democracy also gets legitimacy from the perspective of political fiqh.

There are two arguments to strengthen this understanding. Theologically-normatively, the thought framework that ar-Raisuni built has shown that democracy has no religion. Like *shūrā*, democracy is a means that its application may differ from one another. Both of them are *wasīlah*, and not *ghāyah*. The second argument is sociological-historical. Sociologically, Indonesia is a nation of diverse tribes, religions, and cultures. The concept of democracy is the most suitable system for a country like Indonesia.

**Second**, criteria for leaders in Indonesia. There is a significant difference between classical political fiqh and Indonesian-nuanced political fiqh in looking at leadership issues. Classical political fiqh views a leader from two points of view at once, namely as a guardian of religion and in charge of state administration while Indonesian-nuanced political fiqh views a leader as someone who deals only with the administration of state.

There are consequences of each of these views. If a leader is conceived of as a person in charge of administration while maintaining religion, it will have an effect on the conditions that must be met by someone who wants to occupy that position. To become a leader as in classical political fiqh, an important condition is needed. Besides intellectual morals, his religious status is considered. Classical political fiqh requires that a leader must be a Muslim. Religious condition is fundamental besides moral and intellectual condition. The requirement of this condition is acceptable because it is appropriate to the context at that time. Thus, the condition of having to be a Muslim is the right choice in the midst of social and political situations and conditions that indeed required this.

Meanwhile, in the different social and political contexts, Indonesian-nuanced political fiqh formulates different provisions. For a leader in the Indonesian context, the religious condition is not a requirement. The main consideration in this regard is his moral and intellectual condition. Moral requirement in this context relates to everyday behavior that can be traced from the life track record of the person concerned. So, regardless of his religion, if the person concerned has a good track record, then that person has the right to be elected as a leader. It must be understood that the matter of morality is actually not tied to one particular religion. Any religion that is recognized in Indonesia basically teaches that good behavior, such as being honest and being fair, is the teaching that is recognized for its truth in each religion. Honesty and fairness are the perennial values found in every religious teaching in the world.

As for what is meant by intellectual condition is the capability in managing administrative policies. Managerial ability is an absolute requirement so that institutional management and policy making can be in line with regulations. Therefore, this capability is an important thing that must be owned by someone who has the intention to run for leadership.

However, it needs to be understood that the moral and intellectual condition cannot work independently. The two must be complementary for each other. If a person fulfills moral requirement only without having intellectual condition, it will be difficult for him to manage policies. By contrast, if a person only meets intellectual condition while his morality is broken, his leadership will only cause damage and misery. This is clearly contrary to the principle of *Maqāṣid al-Sharī'ah*.

**Third**, the state format of Indonesia. Lately, the format of the unitary state chosen by Indonesia has been sued by groups which carry the idea of founding *khilāfah*. In their perception, the format of the unitary state chosen by Indonesia is not in line with the teachings of Islam, especially with democracy as a system implemented in it.

Actually, the provisions contained in Indonesian-nuanced political fiqh are not much different from those formulated in classical political fiqh. It is well known that classical political fiqh also does not provide standard rules on how a state format should be. Terms that refer to the meaning of state vary depending on the context discussed. In classical political fiqh, discussions about state and leaders are indeed closer to the format of a dynastic kingdom. It must be understood that at that time, the prevailing state format was the dynastic system. Therefore, do not be surprised if the concept offered is related to this reality.

The current context which is far different from the past certainly requires new thinking in accordance with the socio-political context that is happening. So, the choice of the unitary state format is nothing but the result of *ijtihad* that has been adapted to the Indonesian context. As a result of the nation's *ijtihad*, it is clear that the choice of the unitary state as the state format is in accordance with religious teachings.

Thus, the Unitary State of the Republic of Indonesia (NKRI) is essentially a product of *ijtihad* in political fiqh that has been adapted to the Indonesian context which has a plurality in terms of religion, ethnicity, language and culture. Therefore, as citizens, it is right to guard and defend this outcome of the *ijtihad* from attacks by groups whose mission is to change the format of the state to *khilāfah*. The unitary state is the state format that is already very Islamic. Therefore, maintaining and loving it is an obligation and part of faith.

**Fourth**, the application of Islamic law in Indonesia. After the reformation, the enthusiasm to implement Islamic law becomes strong. One of discourses

that appear is the discourse of returning the Jakarta Charter.<sup>45</sup> In addition, the emerging transnational Islamic groups such as HTI whose mission is to change the unitary state format of Republic of Indonesia to *khilāfah* also have a discourse to apply Sharia law.

The discourse maintained in classical political fiqh also hints at the application of Islamic law in every rule. This should be understood because the format of state in the discourse of classical political fiqh is a `religious` state, with Muslims as its sole rulers. What is discussed in the discourse of classical political fiqh can be understood and accepted because the social and political context indeed demands it. So it is understandable that the doctrines in the discourse of classical political fiqh make the application of Islamic law as the main foundation of state. The application of Islamic law in the discourse of classical political fiqh is the formal application in all dimensions of life, from worship, social relation, to *jināyah*.

Indonesian-nuanced political fiqh also sees the need to implement Islamic law in all dimensions of life, including in running state. The difference is that what is discussed in Indonesian-nuanced political fiqh focuses more on the application of the substance rather than the formality as discussed in the discourse on classical political fiqh and struggled by organizations such as HTI.

The application of Islamic law substantially has actually been practiced by the state since its establishment. Pancasila as the basic philosophy of the state contains substantial values of religious teachings. Even so, in fact there are many formal rules that are essentially manifestations of the teachings of Islamic law, such as the Marriage Law, Zakat Law, and Hajj Law.

Some of legal-formal rules above are proofs that in essence, Indonesia with the unitary state format and Pancasila has implemented the substance of religious teachings. Therefore, there is no reason to change the foundation of the state with Qur'an-Hadith for example. This is because Pancasila and the 1945 Constitution are in accordance with the two primary sources in Islam. Thus, based on the perspective of Indonesian-nuanced political fiqh, all the rules legally set by the government are no doubt to be in accordance with the substance of Islamic teachings (*Maqāṣid al-Sharī`ah*).

## CONCLUSION

Islamic political thought that found in various literatures of classical political fiqh needs to be reconstructed from several sides. There are several issues that must be updated and reviewed, then adjusted to the context and development

<sup>45</sup> Mujar Ibnu Syarif, "Spirit Piagam Jakarta Dalam Undang-Undang Dasar 1945," *Jurnal Cita Hukum* 4, no. 1 (2016): 15-32, <https://doi.org/10.15408/jch.v4i1.3568>.

of the times. The reconstruction of several issues in classical political fiqh is very important because the context in Indonesia is very different from the context that occurred in the past. Political fiqh is a product of limited human thought and not a normative product which binds and forces it to be accepted. Because political fiqh is a product of human thought, it is historical. In addition, some issues in classical political fiqh, if forced to be applied in Indonesia, will actually bring difficulties and disunity. This is very contrary to the principles of *Maqāṣid al-Sharīḥah*. From the results of the reconstruction, there are four crucial issues in classical political fiqh that have been contextualized into the Indonesian context. The four issues are: democracy, the state format, leadership, and the application of Islamic law.

From the research conducted by the author, there is a need to a deeper and comprehensive study on Indonesian-nuanced political fiqh. In terms of quantity, studies on the four issues that the author raises are still too few. These four issues can become an entry point in developing the study of Indonesian-nuanced political fiqh. Subsequent researches can add to the issues studied so that a sort of complete reference to Indonesian political fiqh which is relevant to the Indonesian context can be compiled.

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