

## **Ibn Al-Muqaffa's Proposal for *Taqnīn* and its Synchronization with Islamic Law Codification in Indonesia**

H. Y. Sonafist

Institut Agama Islam Negeri Kerinci

Email: sonafistkrc@gmail.com

Yasni Efyanti

Institut Agama Islam Negeri Kerinci

yasnief@yahoo.co.id

Ramlah

UIN Sultan Thaha Saifuddin Jambi

RamlaHibrahim72@yahoo.com

Ali Hamzah

Institut Agama Islam Negeri Kerinci

aliamzah311268@gmail.com

Faizin

Institut Agama Islam Negeri Kerinci

niziaf1970@gmail.com

### **Abstract**

The research problems addressed in the article are the background story behind Ibn al-Muqaffa's proposal for *taqnīn*, the historical background of the creation of the Islamic law codification in Indonesia, and the synchronization of ibn al-Muqaffa's idea for *taqnīn* with the codification of Islamic law in Indonesia. The current study aims to unravel the view of Ibn Al-Muqaffa, an Islamic figure, about *taqnīn*. A biographical study was conducted by doing library research, especially on Ibn Al-Muqaffa's proposal for *taqnīn*. The data collection procedure was divided into three parts i.e., orientation, eksplorasi, focus-oriented research. Biographical research is a part of qualitative study that uses data analysis technique and literature study as the qualitative data analysis as well as content analysis through the historical and textual approach. The results of the study reveal the method of law

implementation before and during the lifetime of Ibn Al-Muqaffa which could be described as chaotic, with one of the reasons was because, at the time, the court had not possessed the statute that governed the legal activities other than the Islamic jurisprudence (*fiqh*) which was used by the judges in accepting, examining, and deciding on cases addressed to them. Therefore, every judge took a decision based on their own *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). Ibn Al-Muqaffa advised the Khalifa Abu Jakfar Al-Manshur to compile the correlated legal reasonings in Islamic jurisprudence in which to be implemented and to be applied as the binding legal force in the form of statutory law which was regulated nationally and to be used as guidance by all the judges without no exception. The codification of Islamic law in Indonesia has received a constitutional status based on philosophical, sociological, and juridical reasons. The researchers closely examine three types of Islamic legal laws i.e., Act number 7 of 1989, Act number 3 of 2006, and Act number 50 of 2009 concerning Religious Courts, Act number 41 of 2004 concerning *Waqf* (Endowment), and Act number 21 of 2008 concerning *Sharia* (Islamic) Banking. *Taqnīn* (the codification of Islamic law) must be adjusted to demands of the present time in which it is implemented and in accordance with the specific fields of law, for example, *taqnīn* for Civil Law, Criminal Law, Family Law, Judicial Law, State Administrative Procedure Law, State Administrative Law, And State Finances.

**Keywords:** Ibn al-Muqaffa, *taqnīn*, Islamic law codification, and synchronization.

***Ide Taqnîn Ibn Al-Muqaffa dan Sinkronisasinya dengan  
Kodifikasi Hukum Islam di Indonesia***

H.Y. Sonafist

Institut Agama Islam Negeri Kerinci

Email: sonafistkrc@gmail.com

Yasni Efyanti

Institut Agama Islam Negeri Kerinci

yasnief@yahoo.co.id

Ramlah

UIN Sultan Thaha Saifuddin Jambi

Ramlaibrahim72@yahoo.com

Ali Hamzah

Institut Agama Islam Negeri Kerinci

aliamzah311268@gmail.com

Faizin

Institut Agama Islam Negeri Kerinci

niziaf1970@gmail.com

***Abstrak***

*Permasalahan penelitian adalah latar belakang lahirnya ide taqnîn ibn al-Muqaffa, sejarah dan latar belakang lahirnya kodifikasi hukum Islam di Indonesia, sinkronisasi ide taqnîn ibn al-Muqaffa dengan kodifikasi hukum Islam di Indonesia. Tujuan penelitian ini mengungkapkan pemikiran tokoh ibn al-Muqaffa tentang taqnîn. Pendekatan adalah studi tokoh, library research, khususnya pemikiran ibn al-Muqaffa tentang ide taqnîn. Prosedur pengumpulan data yaitu tahap orientasi, eksplorasi dan penelitian terfokus. Penelitian tokoh bersifat kualitatif dan analisis data adalah analisis kualitatif dengan teknik analisa data adalah studi literatur dan analisis isi melalui pendekatan sejarah dan tekstual. Hasil penelitian adalah melihat penerapan hukum sebelum dan pada masa hidup Ibn al-Muqaffa berada dalam kondisi yang sangat kacau, salah satu faktor penyebabnya adalah karena pada waktu itu pengadilan yang ada belum memiliki kitab undang-undang yang mengikat di luar fikih yang dapat dijadikan pedoman oleh para hakim dalam menerima, memeriksa, dan*

*memutuskan perkara yang diajukan kepadanya, sehingga setiap hakim memutuskan perkara yang diajukan kepadanya berdasarkan ijtihadnya masing-masing. Ibn al-Muqaffa menyarankan kepada khalifah Abu Jakfar al-Manshur agar dihimpun pendapat-pendapat fikih yang relevan untuk diterapkan pada masa itu dan diberi kekuatan hukum yang mengikat berbentuk undang-undang resmi yang diberlakukan secara nasional dan dapat dijadikan pedoman oleh semua hakim tanpa kecuali. Kodifikasi hukum Islam di Indonesia telah mendapat tempat konstitusional yang dilandasi alasan filosofis, sosiologis dan yuridis. Penulis mengkaji secara lebih mendalam tiga macam-macam undang-undang hukum Islam, yaitu: UU No. 7/1989, UU No. 3 tahun 2006 dan UU No. 50 tahun 2009 tentang Peradilan Agama, UU No. 41 tahun 2004 tentang wakaf, dan UU No. 21/2008 tentang Perbankan Syari'ah. Taqnîn (kodifikasi hukum Islam ini) harus disesuaikan dengan tuntutan zaman dan bidang masing-masing, misalnya taqnîn hukum perdata, hukum pidana, hukum keluarga, hukum peradilan, hukum tata usaha negara, hukum administrasi negara, dan keuangan Negara.*

**Kata kunci** : *Ibn al-Muqaffa, taqnîn, kodifikasi hukum Islam, dan sinkronisasi.*

## **Introduction**

The formation of Islamic law during the time of prophet Muhammad SAW (pbuh) was under the leadership of the prophet himself. The primary sources of Islamic Law were the Qur'ân (the direct and unaltered word of God) and the *Sunna* (Prophetic traditions and practices) which were considered to be sufficient at the time. The Islamic law then was not separated from the entire teachings of Islam, as it subsumed in the behaviour and practices of Rasulullah (prophet Muhammad).

In the reign of *al-Khulafâ'u ar-Rāshidūn* or *Rashidun* Caliphates (11-40 H/632-661 AD), the legal authority still resided in the power of the Caliphs, as the successor of the Prophet who also held the role as the head of state and the religious leader. In overcoming various social problems, the Caliph's legal policy became the commands. Although the revelations from God had been

compiled in the form of Usmani Manuscripts, the codification of law had not yet been established. Al-Quran is a complete codification of religious teachings compared to the other Statute Books.<sup>1</sup>

There had been a role shift during the time of the Umayyad Caliphate (41-132H/661-750 AD). The caliphs from Umayyad dynasty, with an exception for Umar bin Abdul Aziz, were not *ulama* (Islamic scholars) who had the expertise in delivering *ijtihad* and possessed the comprehensive knowledge of the religion. The *ulama* had no political power and only dealt with the religious issues while the government affairs were managed by the Caliph. From this time on, there was a separation between the two powers. The rulers of Umayyad dynasty ran the state administration in Damascus while Islamic jurists centered in Madinah. Under these conditions, the scholars established the Islamic legal framework in their own regions. Regarding the legal validity for the law establishment, people need a ratification from the Caliph because the legal decision was a binding precedent. This circumstance happened because there were no religious jurists involved in the governance, for example the prominent Islamic scholars or Imams from the *madhhabs* (a school of thought within Islamic jurisprudence), because those Imams were not willing to be appointed as a royal judge.<sup>2</sup>

When Ibn al-Muqaffa ran the office as a secretary for Governor Kirman in Irak, he thought that the implementation of law in the past and during his lifetime could be described as chaotic.

As a result, within the same jurisdiction or even for the similar cases, different legal decisions that contradicted to each other could be made, depending on the courts, the judges who handled the

---

<sup>1</sup>Muhammad Yusuf dan Ismail Suardi Wekke, Menelusuri Historisitas Pembentukan Hukum Islam: Menggagas Yurisprudensi Islam Indonesia, *Jurnal Tsaqafah*, Vol. 8, No. 2, Oktober 2012. Mursyid Djawas, Jejak Maqashid al-Syari'ah di Nusantara: Melacak Fuqaha Bebasis Maqashid al-Syari'ah dan Hasil ijtihadnya, *Aricis Proceeding 1*, 2017.

<sup>2</sup>Among the *fuqaha* (Islamic jurist and expert in Islamic Law and Islamic Jurisprudence) who rejected the position of judge were Abu Hanifah, Ibn Hubairah, Muhammad ibn Abdillah who was also known as *al nafs al-zakiyya*, and Yahya ibn Abdillah. See: T.M. Hasbi Ash Shiddieqy, *Peradilan dan Hukum Acara Islam*, Semarang: PT. Pustaka Rizki Putra, 1997, print. I, edition II, p. 23-26

cases, as well as the *madhhabs* they used as reference in reaching a verdict. For example, murdering and sexually harassing someone were considered to be lawful in the Hirah region. However, in Kufah, both acts were strictly prohibited, and the suspects could be severely punished.<sup>3</sup>

When Ibn al-Muqaffa was still alive, his proposals which were documented in the book of *Risālah al-Sahābah*, did not get the attention of law enforcement officers at that time. The situation became worse with the tragic incidents that he suffered at the end of his life. He was accused of being an insurrectionist and was dishonorably discharged from his position (secretary of the governor), and later was given a death penalty. Ibn al-Muqaffa lived in the same period of time as Imam Malik did in Medina (93-179 H). However, the possibility of the two figures encountering each other can be barely found in the literature. It might be due to the long distance of their residences in which Imam Malik lived in Medina and Ibn al-Muqaffa was in Kirman, Irak. When Ibn al-Muqaffa passed away, Imam Malik was 43 years of age.

Using his position as a governor secretary, Ibn al-Muqaffa advised Caliph Abu Ja'far al-Manshur to make a codification of law through the book of *Risālah al-Sahābah* between the year of 137-139 Hijri. In the meantime, Caliph al-Manshur requested Imam Malik to write the book of *al-Muwaththa'* which comprised the binding legal force in the year of 163 H-164 H. Therefore, it can be assumed that, by delivering the idea of *taqnīn*, Ibn al-Muqaffa had preceded Imam Malik who compiled the book on behalf of the request from Caliph al-Manshur. Another source states that Imam Malik himself took the initiative to write the book of *al-Muwaththa'*.<sup>4</sup>

After the death of Ibn al-Muqaffa, some *mujtahid* (authoritative interpreters of the Islamic law) felt the necessity for considering Ibn al-Muqaffa's suggestions, especially those related to

---

<sup>3</sup>Abd Allah ibn al-Muqaffa', *Risālah Ibn al-Muqaffa' fi al-Sahābah*, Beirut: Dar al-Kutub al-'Ilmiyyah, 1989 M/1409 H, p. 8. Also read: Mochtar Effendi, *Ensiklopedi Agama dan Filsafat*, Palembang: Publisher Universitas Sriwijaya, 2001, print. I, p. 364.

<sup>4</sup>Abdul Aziz Dahlan (et. al.), *Ensiklopedi Hukum Islam*, Jakarta: Ichtisar Baru van Hoeve, 1996, Vol II, print. I, p. 615.

the codification of law. This matter was also concerned by the Caliph Abu Ja'far al-Mansur. Therefore, while he was conducting pilgrimage in the year of 163 H/760 AD, approximately fourteen years after the death of Ibn al-Muqaffa, Caliph Abu Ja'far al-Mansur came to see Imam Malik. The Caliph asked him to compile the book of Islamic Jurisprudence, constituting the law based on the primary sources by considering the principle of ease in implementing the law. At that time, the Caliph Abu Ja'far al-Mansur asked Imam Malik to choose a simple, neutral argument, which was agreed upon by his companions so that the book could be promulgated as a legal guidance in the entire Moslem state. The Caliph Abu Ja'far al-Mansur gave Imam Malik one year of time to finish the book. To fulfill the request, Imam Malik produced his best-known work, the book of *al-Muwaththa'*. When finished, the book was handed over to Muhammad ibn al-Mahdi, as the caliphate representative. However, the efforts of the Caliph to enforce the *al-Muwaththa'* book as a form of codification of law had not been successful.<sup>5</sup> Thus, it can be understood that Ibn al-Muqaffa's idea of *taqnīn* first appeared, which was then followed by the composition of *al-Muwaththa'*.

Ibn al-Muqaffa's proposal was eventually noticed in the year of 1293 H/1876 AD by the Ottoman Empire who had conducted the codification of law which was later known as *Majallāt al-Ahkām al-'Adliyyah*. It was the Civil Law of the Ottoman Empire which was adopted from Islamic provisions originating from the Hanafi's *madhab* (school of thought).<sup>6</sup> In this *majallah*, there were no more differences of arguments, so that the resulting legal product was uniform. The *taqnīn* activity extended to other Moslem countries, beginning with the states under the Ottoman Empire, and later expanding to all Moslem countries including Indonesia.

It obviously appeared that the Caliph who had sentenced Ibn al-Muqaffa to death still needed his ideas. It was Caliph Abu Ja'far al-Mansur who accused him of "having a conspiracy" with the rebelous militants, because of which Ibn al-Muqaffa was dismissed from his office and sentenced to death; and also, it was the Caliph

---

<sup>5</sup> Abdul Aziz Dahlan (et. al.), *Ensiklopedi Hukum...*, p. 961

<sup>6</sup> Muhammad Ibn Subhi Mahmasani, *Falsafah Tasyri' fi al-Islam*, translated as *Filsafat Hukum Dalam Islam*, Bandung: PT al-Ma'arif, 1981, p. 71.

who asked Imam Malik<sup>7</sup> to put Ibn al-Muqaffa's ideas into practice. This proved that his ideas or thoughts were still respected, even though the initiator was not necessarily appreciated. Ibn al-Muqaffa was not known as an expertise in Islamic jurisprudence, because none of his ideas were in the form of legal stipulation. His idea, which was very crucial, was the proposal for *taqnīn* (codification of law) in order to guarantee legal certainty, an idea that continues to live and develop until today.

Abdul Ghani Abdullah stated that Islamic law in Indonesia has received constitutional legitimacy based on three reasons, namely philosophical, sociological and juridical reasons in the 1945 Constitution of Indonesian Republic, providing a capacity for the enforcement of Islamic law in a formal juridical manner.<sup>8</sup> The legislation products, either formal or material, that have Islamic legal content, are as follows; Act number 7 of 1989 concerning The Religious Courts (later renewed as Act number 3 of 2006 and Act number 50 of 2009); Act number 17 of 1999 concerning the Management of Hajj (later renewed as Act number 13 of 2008); Act number 38 of 1999 concerning the Management of Zakat and later renewed as Act number 23 of 2011 concerning the Management of Zakat; Act number 41 of 2004 concerning *Waqf*; Act number 21 of 2008 concerning Syariah (Islamic) Banking; Act number 19 of 2008 concerning Sovereign Sharia Securities.

The significance of the research is to develop knowledge in the field of sharia, especially in the knowledge of Ibn al-Muqaffa's thought of *taqnīn* and its synchronization with the dynamics of codifying Islamic law in Indonesia. As for the researchers, it is to practice doing research and writing scientific paper. This study provides information and academic analysis as inputs for future researchers in further investigating the study. For readers, it is academically beneficial to understand Ibn al-Muqaffa's thought of *taqnīn* and its synchronization with the dynamics of the codification of Islamic law in Indonesia.

---

<sup>7</sup>Abdul Fattah, *Târîkh al-Tasyrî' al- Islâmîy*, Mesir: tp., 1981, print. II, pp. 270-271

<sup>8</sup>Abdul Ghani Abdullah, *Peradilan Agama Pasca UU no. 7/1989 dan Perkembangan Studi Hukum di Indonesia*, dalam *Mimbar Hukum* no. 1 year V, Jakarta: Al-Hikmah dan Ditbinpera Islam Depag RI, 4, pp. 94-106.

The researchers attempt to develop the patterns of Ibn al-Muqaffa's thought based on Indonesian context by analyzing Act number 7 of 1989, Act number 3 of 2006 and Act number 50 of 2009 concerning The Religious Courts, and Act number 41 of 2004 concerning The Management of *Waqf*, and Act number 21 of 2008 concerning Syaria (Islamic) Banking.

### **The Synchronization of Ibn al-Muqaffa's Proposal for *Taqnīn* with the Codification of Islamic Law in Indonesia**

The existence of Islamic law in Indonesia will be explained in three periods, namely Islamic law in the Pre-Dutch Colonial Period. From the historical perspective, prior to the arrival of Islam in Indonesia, the country had recognized two forms of administrations of justice, namely the *Pradata* Court and the *Padu* Court. The *Pradata* Court took care of the legal matters which were categorized as the royal affairs, while the *Padu* Court managed the cases which were not under the direct authority of the king.<sup>9</sup> *Pradata* Court was based on Hindu law found in *Papakem* or the book of law, which also became the written law, while the *Padu* Court was based on the unwritten original Indonesian law (Customary Law). Thus, it emphasizes that the Religious Courts in their forms, which we recognize today, are an unbroken link from the history of the entry of Islam into this country.

Before the Dutch colony came to Indonesia, there had been large kingdoms on the land such as Samudera Pasai and Aceh Darussalam (Sumatra), Pajang, Demak, and Cirebon (Java), the Kingdom of Banjar and Kutai (Kalimantan). Religious institutions were formed to implement Islamic law in those kingdoms as well as in other Islamic kingdoms that were scattered in the archipelago. One of such institutions was the Religious Court which was tasked with judging and settling cases between Muslims. The judges in this institution were appointed and dismissed by the sultan in their respective kingdoms (sultanates).

The implementation of Islamic Law during the Dutch Colonial Period. The period of the application of Islamic law in Indonesia

---

<sup>9</sup>Tresna, *Peradilan di Indonesia dari Abad ke Abad*, Jakarta: Pradnya Paramita, 1978, p. 17.

during the Dutch colonial era in the archipelago began with the arrival of the Europeans who colonized the land at the beginning of the 17th century, especially since the success of the Dutch VOC (*Vereenigde Oost-Indische Compagnie* or Dutch East-India Company) who practically occupied Malacca until 1942 when the Dutch colonial government surrendered its colonies in Indonesia to the Japanese Empire. The full enforcement of Islamic law as material law for the administration of justice. When the Dutch came to colonize the land, they recognized that Islamic law had become a *living law* for the Indonesian people and it had been practiced for years, even becoming a "customary tradition". The Dutch colonial government even facilitated the codification of Islamic law which would later be used as a guidance by judges (*Landraad*) in exercising their judicial power over Moslems in the archipelago. Among those Acts were:

1. *Compendium Freijer* which was a codification of the Marriage Law and the Islamic Inheritance Law passed by the VOC Court, then legislated through the *Resolutie der Indische Regering* on May 25, 1760.
2. *Cirsbonscg Rechboek* made on the suggestion of a Cirebon Resident, named Mr. P.C. Hosselaar (1757-1765).
3. *Compendium der Voornaamste Javaansche Wetten nauwkeurig getrokken uit her Mohammadaansche Wetboek Mogharrer* which was made in 1750 for the Landraad in Semarang.
4. *Compendium Indlansche Wetten bij de Hoven van Bone en Goa* which was authorized by the VOC to be implemented in the Makassar region.
5. *Boedelsscheidingen of Java volgens de kitab Saphi'i* made by J.E.W. Van Nes in 1850. *Handboek van het Mohammadaansche Recht* which was made by A. Meurenge in 1844.

The enforcement of Islamic law after the Customary Law was perceived in the judiciary. Entering the 19th century, the Dutch Colonial Government started to encounter numerous resistances from the Indonesian people pioneered by several Islamic scholars and figures, following the fall of their kings who were conquered by the Dutch. Islamic law as one of the bases of religious plurality awareness was to be removed from the life of the Indonesian Moslem

community by asserting the Customary Law as a rival. On the other hand, the emergence of the Customary Law was expected to establish the Dutch colonial government closer relationship with the indigenous people in the archipelago by utilizing the tactics of *divide et impera* (Divide and Rule).

The Dutch East Indies government then systematically paralyzed and inhibited the development of Islamic law in Indonesia in such ways as follows:

1. Islamic criminal law (*fiqh al-jināyah*) was completely removed from the legal system and replaced by the Dutch criminal law or Wetboek van Strafrecht which was enforced since January 1919 with *Staatsblaad* (State Gazette) 1915: 732.
2. The Islamic Constitutional Law (*fiqh al-siyāsah*) was completely abolished. The study of Qur'anic verses or hadiths involving Islamic politics or constitutionality was prohibited. The implementation of the Islamic Inheritance Law was hindered by removing the judicial authority of the Religious Court in Java and South Kalimantan in applying the law on the issue of heirs, giving the legal authority to resolve the issue of heirs to the common court (*Landraad*), as well as prohibiting the settlement of matters using Islamic law if the place where the case was found did not recognize the Customary Law.
3. Subsiding the area of Family Law concerning the Islamic Marriage Law (*fiqh al-munākahat*)

Islamic Law during the Japanese occupation. After the Dutch surrendered unconditionally to the Japanese Military Commander on March 8th, 1942, the Japanese government immediately issued various regulations. One of the decrees was Act number 1 of 1942, which confirmed that the Japanese Government continued all the ruling powers and policies previously held and implemented by the Governor General of the Dutch East Indies. The new stipulation, indeed, had only implied that the implementation status of the Islamic Law then would remain as in the condition where the Dutch East Indies government ruled the land, indicating a powerless authority for the legality and enforcement of Islamic law towards people's lives.

The Imperial Japanese Government attempted to attract the sympathy of Indonesian Moslems by formulating various accommodating policies, including:

1. The commitment of the Japanese Military Commander to protect and promote Islam as the majority religion for the people of Java,
2. Founding the *Shumubu* (Office of Islamic Affairs) which was led by the Indonesian people themselves,
3. Allowing the establishment of Islamic organizations, such as *Muhammadiyah and Nahdlatul Ulama* (NU),
4. Approving the establishment of the Indonesian Muslim Shura Council (*Masyumi*) in October 1943,
5. Approving the establishment of Hizbullah as a military reserve force, to complement the creation of PETA (an Indonesian volunteer army founded by the occupying Japanese Empire),
6. Attempting to fulfill the request of Islamic leaders to restore the legal authority of the Religious Courts by asking an expert in the Customary Law (Soepomo) in January 1944 to submit a report on this matter. However, this attempt was "emphatically rejected" by Soepomo on the grounds of its complexity and postponed it until Indonesia's independence.

Islamic Law in the post-independence period. After Indonesia declared its independence, the government began to think about making efforts to restore the status of Islamic law for this nation. In October 1957, the Government issued the Government Regulation No. 45 year 1957 which regulates the formation of the Religious Courts outside Java, Madura and South Kalimantan. The release of the Government Regulation No. 45 year 1957 means the victory for Moslems in making such endeavour to legislate Islamic law in this country. In addition, the theory of *receptie* issued by the government of Dutch East Indies met strong resistance from Indonesian Islamic law scholars. Masrani Basran, at the Muhammadiyah congress in Solo on December 9th, 1985, stated that there were several things behind the codification of Islamic law, among of which are as follows:

1. The unclear perceptions of shari'ah and *fiqh*. It could also be said to be a "perception of chaos" regarding the meaning and scope of the meaning of Islamic shari'ah, Islamic syari'ah was

sometimes equated with *fiqh*, at a different time, determining perceptions was even considered the same as *al-dīn*.

2. There was no uniformity in determining what was called Islamic law
3. It was unclear how *syaria* was to be implemented.

### **1. An analysis of Act No.7 of 1989, Act No. 3 of 2006 and Act No. 50 of 2009 Concerning the Religious Courts.**

Indonesia is a constitutional state (*rechtsstaat*), not the state of power (*machtsstaat*).<sup>10</sup> Pancasila must be appointed as the foundation and source of law, and in this manner, the constitutional state of Indonesia can also be called the constitutional state of Pancasila. One of the main points in the constitutional state of Pancasila is the guarantee of freedom of religion for all its citizens.<sup>11</sup> This is in line with what is stated in the 1945 Constitution of the Republic of Indonesia that the state has guaranteed the freedom for its citizens to embrace and practice their respective religions.<sup>12</sup>

Indonesia is also popular as the largest Moslem country in the world, but what makes it unique is that Indonesia is not an Islamic country.<sup>13</sup> The Indonesian Muslim community already have a strong basis for enforcing the provisions of Islamic Civil Law in their society. The status of Islamic law in the civil sector has been widely interwoven in Positive Law, either it is an element that affects, or it is as a modification of religious norms formulated in statutory regulations or that are included in the substantial scope of the Law on Religious Courts.<sup>14</sup>

Relative competence means the the jurisdiction of the court within the same level and category, in contrast to other courts of the

---

<sup>10</sup> Muhammmad Tahir Azhary, *Negara Hukum*, Jakarta: Prenada Media, 2003, p. 91.

<sup>11</sup> Muhammmad Tahir Azhary, *Negara Hukum...*, p. 93.

<sup>12</sup>See Article 28E section (1). Article 28I section (1), article 29 section (2) of the 1945 Constitution of the Republic of Indonesia.

<sup>13</sup> A. Ubaydillah, *Pendidikan Kewarganegaraan (Civic Education)*, Jakarta: ICCE UIN Syarif Hidayatullah, 2008, p. 97.

<sup>14</sup>A. Malik Fajar, "Potret Hukum Pidana Islam: Deskripsi, Analisis Perbandingan dan Kritik Konstruktif", in M. Arskal Salim GP dan Jaenal Aripin, ed., *Pidana Islam di Indonesia: Peluang Prospek dan Tantangan*, (Jakarta: Pustaka Firdaus, 2001), p. 15.

same type and level.<sup>15</sup> *Relative Competence can be defined as the authority of the court to adjudicate cases within the domain of its jurisdiction.*<sup>16</sup> Each judicial body has the authority to rule cases under its jurisdiction, article 4 of Act Number 7 of 1989. The importance of this relative competence is to find out the Religious Courts in which a person will file the case and its relationship with the defendant's right to object (exception right).

The absolute competence or absolute authority means the power of the court's authority to rule based on the legal material (Material Law).<sup>17</sup> Another reference states that it is the power or authority of the court in examining certain types of cases which absolutely cannot be examined by other courts, either within the same court or within another. The Absolute Power of the Religious Courts is regulated in Articles 49 and 50 of Law no. 7 of 1989 which has been amended by Law No. 3 of 2006 concerning Amendments of Law no. 7 of 1989 concerning Religious Courts. Article 49, letter a, Law no. 3 of 2006 consists of matters that are regulated in the Constitution regarding marriage based on (Law No. 1 of 1974) which is implemented on the basis of Syaria. The Supreme Court Regulation Number 2 of 2008 concerning Regulation of the Supreme Court of the Republic of Indonesia regarding the Compilation of Sharia Economic Law.

Article 3A of Act number 3 of 2006 stipulates that Courts specialization, regulated in the Constitution, is allowed to be conducted within the Religious Courts. Article 49 of Act number 3 of 2006 stipulates that the types of cases under the authority of the Religious Courts are expanding, with the power to adjudicate Sharia economic disputes. Article 2 of Act number 50 of 2009, regarding the interpretation of the Religious Court, states that the Religious Court is a court for the followers of the religion of Islam. Article 2 of Act number 50 of 2009. Article 5 of Act number 3 of 2006 states that the technical guidance for the judiciary, administrative and

---

<sup>15</sup> Royhan A. Rasyid, *Hukum Acara Peradilan Agama*, Jakarta: RajaGrafindo Persada, 1992, p. 25.

<sup>16</sup> Departemen Agama, *Pedoman Beracara pada Peradilan Agama*, Ditjen Binbaga Islam, Jakarta: Direktorat BPA, 1980/1981, p. 2

<sup>17</sup>*Ibid*

financial management of the courts are conducted by the Supreme Court.

The new statute regarding Religious Courts, number 50 of 2009 contains new amendments / additions including the following: (1) Specialized Courts within the Religious Courts; (2) Judges ad hoc in Religious Courts (3) Internal supervision by the Supreme Court and external supervision by the Judicial Commission (4) A decision can be used as a basis for transfer (5) The appointment of the judges is carried out by the Supreme Court and the Judicial Commission. (6) Dismissal of judges, in conformity with the proposal of the Supreme Court and/or Judicial Commission, is delivered via the decree of Minister of Religious Affairs. (7) The remuneration for the judges as a state official (8) The retirement age of the judges is 65 years old at the Religious Court and 67 years old at the Religious High Court. As for the registrar, 60 years old at the Religious Courts and 62 years old at the Religious High Courts. (9) The provision of legal aids at every Religious Court (10) Guarantee of public access to court information, and (11) A warning of a dishonorable discharge for the judges collecting illegal fees.

## **2. An analysis of Act no. 41 of 2004 concerning *Waqf***

The *Waqf* (endowment) administration model prior to the enactment of Law number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Government Regulation number 28 of 1977 concerning: The Founding of *Waqf* on Land with Ownership Title. Government Regulation number 28 of 1977 explains that *Waqf* is a religious institution that can be used as a means of developing religious life, in order to achieve spiritual and material welfare towards a just and prosperous society based on Pancasila.

Two years after the enactment of the Republic of Indonesia's Act Number 41 of 2004 concerning *Waqf*.<sup>18</sup> Government Regulation number 42 of 2006 concerning the implementation of Act number 41 of 2004 was issued. Act Number 41 of 2004 is the law that regulates *Waqf*. This law specifically regulates the procedure for conducting *Waqf* along with the directorate that documents *Waqf*,

---

<sup>18</sup>See the full version of the Law of the Republic of Indonesia no. 41 that consists of XI (eleven) Chapters and 71 articles.

namely the Indonesian *Waqf* Board. The law and administration of *Waqf* was formulated in order to protect *Waqf* property, and the government, with the approval of the House of Representatives on October 27<sup>th</sup>, 2004 has ratified and enforced Law of the Republic of Indonesia Number 41 of 2004 concerning *Waqf*.<sup>19</sup>

Since the promulgation of Act number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Government Regulation number 28 of 1977 concerning The Founding of *Waqf* on Land with Ownership Title and the enactment of Act number 41 of 2004 concerning *Waqf*.<sup>20</sup> Philosophically, even though Act number 41 of 2004 and Government Regulation number 42 of 2006 have regulated it, when a property or funds have been pledged as *Waqf*, the *Wakif* who donates it, is expected not to specify a certain period of time for the sake of serene and peaceful mind. This also applies to the assets in the form of money that have been donated. It seems that the existence of the regulations is not sufficient. Therefore, the socialization of the Act number 41 of 2004 concerning *Waqf* and the Government Regulation number 42 of 2006 concerning the implementation of the *Waqf* Law, must be continuously disseminated, ensuring that the public can understand it properly.

### **3. An Analysis of Act no. 21 of 2008 concerning Syaria (Islamic) Banking**

In accordance with the version of Sharia banks in Indonesia, the word *sharia* is defined as a legal contract based on those made by the bank and other parties for depositing funds or for financing business activities and other activities on the basis of Islamic law.<sup>21</sup> The combination of the two words becomes "Syaria bank". Islamic bank is a financial institution that functions as an intermediary for parties who have excess funds with those who lack funds for

---

<sup>19</sup> Satria Effendi M. Zain, "*Pengkajian Dan Pengembangan Metodologi Hukum Fiqih Islam*", makalah seminar Hukum Islam Dan Perubahan Sosial 16-18 Oktober in Semarang.

<sup>20</sup> Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, Jakarta: Kencana Prenada Media Group, 2006, p. 255

<sup>21</sup> Zainuddin Ali, *Hukum Perbankan Syariah*, Jakarta: Sinar Grafika, 2010, print. II, p. 1

business activities and other activities in accordance with Islamic law. Additionally, Syariah banks might be termed as *Islamic banking* or *interest free banking*, which is a banking system that operates without utilizing an interest-based system (*riba*), speculation (*maisir*), and uncertainty or fraudulence (*gharar*).<sup>22</sup>

Under the article 1 No. 1 of Act number 21 of 2008 concerning Sharia (Islamic) Banking, Sharia Banking is defined as: “all matters concerning Sharia (Islamic) Bank and the Sharia (Islamic) Business Unit, including institution, business operation, and means and process in the implementation of its business operation”.<sup>23</sup>

In terms of *riba* (usury or "excess" over the original price of the good or service), Ibn Hajar al-Haitsami explained that *riba* is divided into three classifications, namely *riba fadhl*, *riba yad*, and *riba nasi'ah*. He said that all types of usury have the status of haram by means of *Ijma'* or the consensus amongst Muslim jurists taking references based on the Qur'an and the hadith of the Prophet Muhammad. Allah forbids usury and condemns it as sinful conduct which is stipulated in the Qur'an as follows:

فَبِظُلْمٍ مِّنَ الَّذِينَ هَادُوا حَرَّمْنَا عَلَيْهِمْ طَيِّبَاتٍ أُحِلَّتْ لَهُمْ وَبِصَدِّهِمْ عَنِ سَبِيلِ  
 اللَّهِ كَثِيرًا وَأَخَذَهُمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ وَأَكْلِهِمْ أَمْوَالَ النَّاسِ بِالْبُطْلِ وَأَعْتَدْنَا  
 لِلْكَافِرِينَ مِنْهُمْ عَذَابًا أَلِيمًا

“For the wrongdoing of the Jews, We made unlawful for them certain good foods which had been lawful for them, and for hindering many from the Way of Allah, and their consuming *riba* though they were forbidden from taking it, and their devouring men's substance wrongfully. And We have prepared for the disbelievers among them a painful torment.” (QS. An-Nisa: 160-161)

<sup>22</sup> Zainuddin Ali, *Hukum Perbankan...*, p. 1.

<sup>23</sup> *Undang-Undang Perbankan Syariah 2008 (UU No. 21 tahun 2008)*, Jakarta: Sinar Grafika, 2008, print. I, p. 3

يَأَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ

“O you who believe! do not practise usury and interest involving multiple additions and keep your duty to Allāh and take Him as a shield so that you may prosper.” (QS. Ali Imron: 130)

Apart from the Qur'an, there are many hadiths that mention the prohibition of *riba* (usury), including those narrated by Abu said Al Khudri that Rasulullah SAW said:

عن أبي سعيد الخدري أن رسول الله صلى الله عليه وسلم قال : لا تبيعوا الذهب بالذهب إلا مثلا بمثل ولا تشفوا بعضها على بعض ولا تبيعوا الورق بالورق إلا مثلا بمثل ولا تشفوا بعضها على بعض ولا تبيعوا غائبا بناجز. (رواه البخاري و مسلم)

“From Abu Sa'id al-Khudri: The Prophet, said: "Do not sell gold for gold except when it is like for like, and do not increase one over the other; do not sell silver for silver except when it is like for like, and do not increase one over the other; and do not sell what is away [from among these] for what is ready.” (HR. Bukhari dan Muslim).<sup>24</sup>

Hadis from Abu Hurayrah, Rasulullah saw. said:

عَنْ أَبِي هُرَيْرَةَ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : الرِّبَا سَبْعُونَ حُوبًا أَيْسَرُهَا أَنْ يُكْحَ الرَّجُلُ أُمَّهُ (رواه ابن ماجه)

From Abu Hurayrah: The Prophet, said: “*Riba* has seventy segments, the least serious being equivalent to a man committing adultery with his own mother.” (HR Ibn Majah)<sup>25</sup>

Table 1. The Difference Between Syaria and Conventional Banks <sup>26</sup>

<sup>24</sup> Muhammad Fuad Abdul Baqi, *Mutiara Hadis Sahih Bukhari Muslim*, Surabaya: PT. Bina Ilmu, 2005, p. 540

<sup>25</sup> Ibnu Majah, *Sunan Ibnu Mâjah, Chapter: Taghlîzh fi al-Riba*, Juz 2, hadith no. 2265, p. 764.

<sup>26</sup> Ismail, *Perbankan Syariah*, Jakarta: Kencana, 2014, print. III, p. 38. Also see: Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik*,

No.	Syaria Bank	Bank Konvensional
1.	Make investments that are exclusively approved in the light of the Shariah rulings ( <i>halal</i> ).	Make investments that are both <i>halal</i> and <i>haram</i> (forbidden) based on Islamic principle.
2	Based on the principle of profit-sharing, trading, or leasing.	Business based on interest.
3	Financing is not only for profit but also <i>falâh</i> oriented, which is for the purpose of the welfare of society. <sup>27</sup>	Financing is aimed at obtaining profits on the funds lent.
4	Relationship of customer & bank is of Seller-Buyer and Partnership agreement.	Relationship of customer & bank is in the form of Creditor and Debtor.
5	The supervisory board consists of Bank of Indonesia, Bapepam (Capital Market and Financial Institutions Supervisory Boards), Commissioners, and Sharia Supervisory Board (DPS)	The supervisory board consists of Bank of Indonesia, Bapepam (Capital Market and Financial Institutions Supervisory Boards), and Commissioners.
6	The collection and distribution of funds must be in accordance with the <i>fatwa</i> (a formal ruling or interpretation	No such board is present.

Jakarta, 2001, p. 34. Also see: Heri Sudarsono, *Bank dan Lembaga Keuangan Syariah Deskripsi dan Ilustrasi*, Yogyakarta: Ekonisia, 2003, p. 33.

<sup>27</sup> *Falâh* means seeking prosperity in the world and happiness in the hereafter,

see: Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik*, Jakarta, 2001, p. 34.

	on a point of Islamic law given by a qualified jurist) of the Sharia Supervisory Board (DPS)	
7	Investments are purposed only for projects and products that are profitable and must be on the basis of Syaria principles.	Investments are made on all types of industries and no restrictions are considered regarding the state of halal or haram as long as the project being financed is profitable.
8	The agreement is made in the form of a contract according to Islamic law.	The agreement is made based on the Positive Law.
9	The bank and the customer are in partnership relations.	The relationship between the bank and its customers is creditors and debtors.
10	In the event of disputes, conflicts between the bank and the customer will be thoroughly discussed and mitigated by the religious Courts.	Settlement of disputes of Conventional Banking is conducted by a court in the the local district court

Act number 21 of 2008 concerning Sharia Banking provides a more comprehensive definition of sharia financing as contained under Article 1 number 25, that is: “Financing is the providing of funds or collection compatible to it in the form of:

1. production sharing transaction in the form of *Mudhârabah* and *Musyâarakah*<sup>28</sup>;

---

<sup>28</sup> *Musyâarakah* derives from the word *syarika* which means to become allied. The word *Musyâarakah* means fellowship or association. In Islamic banking terms, *Musyâarakah* is a contract between two or more parties for a particular business, in which each party contributes funds (charity / expertise) with agreement stating that the benefits and the risks will be shared according to the agreement.

Muhammad Syafi'i Antonio, *Bank Syariah...*, pp. 56-57

2. lease transaction in the form of *ijarah* or lease purchase in the form of *Ijârah muntahiya bittamlīk*;
3. sales and purchase transaction in the form of outstanding *murâbahah, salam, dan Istishna'*';
4. lending transactions in the form of outstanding *qardh*; and
5. lease service transaction in the form of *ijarah* for multiple services transactions."<sup>29</sup>

## Conclusion

This article has attempted to illustrate the historical background of Ibn al-Muqaffa's proposal for *taqnīn*. During his lifetime, the existing courts did not yet have a Statute Book that can be used as a guidance for the judges in receiving, examining, and deciding on cases submitted to them, so that each judge adjudicated on the cases submitted to them based on their own *ijtihād* (independent legal reasonings made by a scholar of Islamic law). As a consequence, within the same jurisdiction or even for the similar cases, different legal decisions that contradicted to each other could be made, depending on the courts, the judges who conducted the court, as well as the *madhhabs* they used as reference in reaching a verdict. To resolve the issue, Ibn al-Muqaffa advised the caliph Abu Jakfar al-Manshur, to compile the Islamic doctrines to be implemented at that time and passed it as a binding law in the form of *qânûn* (official laws enacted by a moslem sovereign) that would be enforced in the entire state, ensuring that judges' decisions were uniform.

The *taqnīn* proposed by ibn al-Muqaffa is closely related to the implementation of Islamic law in Indonesia. In the current context, *taqnīn* is considered as a formalization of Islamic law, or known as the *syara'* rules (a set of rules derived from god's commands) that is codified by the government with a binding force and it is meant to be universal. The implementation of *taqnīn* nowadays is a compelling demand, because not everyone has the capability to read and understand the Book of Fiqh written in various *madhhab* (schools of thought), especially those who do not speak Arabic. The *taqnīn* of Islamic law must be adjusted to demands of

---

<sup>29</sup>Sharia Banking Law 2008 (Act No. 21 of 2008), Op. Cit., p. 7

the present time in which it is implemented and in accordance with the specific fields of law, for example, *taqnīn* for Civil Law, Criminal Law, Family Law, Judicial Law, State Administrative Procedure Law, State Administrative Law and State Finances. Ibn al-Muqaffa's proposal for *taqnīn* and its synchronization with the codification of Islamic law in Indonesia has been conducted substantially, the next step needed henceforth is how to develop it at different levels of society.

### References

- A. Malik Fajar, 2001, "Potret Hukum Pidana Islam: Deskripsi, Analisis Perbandingan dan Kritik Konstruktif", dalam M. Arskal Salim GP dan Jaenal Aripin, ed., *Pidana Islam di Indonesia: Peluang Prospek dan Tantangan*, Jakarta: Pustaka Firdaus, 2001.
- A. Ubaydillah, *Pendidikan Kewarganegaraan (Civic Education)*, Jakarta: ICCE UIN Syarif Hidayatullah, 2008.
- Abd Allah ibn al-Muqaffa, 1989 M/1409 H *Risālah Ibn al-Muqaffa' fī al-Sahābah*, Beirut: Dar al-Kutub al-'Ilmiyyah, 1989 M/1409 H.
- Abdul Aziz, Dahlan (et.al.), *Ensiklopedi Hukum Islam*, Jakarta: Ihtiar Baru van Hoeve, Jilid III, cet. I, 1996.
- Abdul Fatah, *Târīkh al-Tasyrī' al-Islâmīy*, Mesir: tp., cet. II, 1981.
- Abdul Ghani Abdullah, *Peradilan Agama Pasca UU no. 7/1989 dan Perkembangan Studi Hukum di Indonesia*, dalam *Mimbar Hukum* no. 1 tahun V, Jakarta: Al-Hikmah dan Ditbinpera Islam Depag RI
- Abdul Latif Hamzah, *Ibn al-Muqaffa'*, Mesir: Dar al-Fikri al-'Arabi, cet. III, 1965.
- Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia*, Jakarta: Kencana Prenada Media Group, 2006.
- Aḥmad Shalabi, *Mawsû'ah al-Târīkh al-Islâmi wa al-Ḥadlârah al-Islâmiyah*, Kairo, Maktabah al-Nahdlah al-Misriyah, Vol. III, Cet.8, 1985.

- Departemen Agama, *Pedoman Beracara pada Peradilan Agama*, Ditjen Binbaga Islam, Jakarta: Direktorat BPA, 1980/1981.
- Effendi Mochtar, *Ensiklopedi Agama dan Filsafat*, Palembang: Penerbit Universitas Sriwijaya, cet. I, 2001.
- Heri Sudarsono, *Bank dan Lembaga Keuangan Syariah Deskripsi dan Ilustrasi*, Yogyakarta: Ekonisia, 2003.
- Ibnu Hajar al Hait sami, *Al-Zawâjir al-I'tirâf al-Kabâir*, vol. 2, t.th.
- Ibnu Majah, *Sunan Ibnu Mâjah, Bab Taghlīzh fi al-Riba*, Juz 2, hadis no 2265, t.th.
- Ismail, *Perbankan Syariah*, Jakarta: Kencana, Cet. III, 2014.
- Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik*, Jakarta, 2001.
- Muhammad Fuad Abdul Baqi, *Mutiara Hadis Sahih Bukhari Muslim*, Surabaya: PT. Bina Ilmu, 2005.
- Muhammad Ibn Subhi Mahmasani, *Falsafah Tasyri' fi al-Islam*, alih bahasa *Filsafat Hukum Dalam Islam*, Bandung: PT al-Ma'arif, 1981.
- Muhammad Yusuf dan Ismail Suardi Wekke, Menelusuri Historisitas Pembentukan Hukum Islam: Menggagas Yurisprudensi Islam Indonesia, *Jurnal Tsaqafah*, Vol. 8, No. 2, Oktober 2012.
- Muhammad Tahir Azhary, *Negara Hukum*, Jakarta: Prenada Media, 2003.
- Mursyid Djawas, Jejak Maqashid al-Syari'ah di Nusantara: Melacak Fuqaha Bebas Maqashid al-Syari'ah dan Hasil Ijtihadnya, *Aricis Proceeding 1*, 2017.
- Royhan A. Rasyid, *Hukum Acara Peradilan Agama*, Jakarta: RajaGrafindo Persada, 1992.
- Satria Effendi M. Zain, "Pengkajian Dan Pengembangan Metodologi Hukum Fiqih Islam", makalah seminar Hukum Islam Dan Perubahan Sosial 16-18 Oktober di Semarang.

- Sudikno Mertokusumo, *Hukum Acara Perdata di Indonesia*, Yogyakarta: Liberty, 1993.
- T.M. Hasbi Ash Shiddieqy, 1997, *Peradilan dan Hukum Acara Islam*, Semarang: PT. Pustaka Rizki Putra, cet. I, edisi II, 1997.
- Tresna, *Peradilan di Indonesia dari Abad ke Abad*, Jakarta : Pradnya Paramita, 1978.
- Umar ibn Qayyimah, *Al-Ru'yah al-Fikriyyah fi al-Hâkim wa al-Ra'iyah Lada Ibn al-Muqaffa' wa Ibn al-'Annabi wa al-Kawakibi*, Yordan-Aman: Dâr Usâmah li al-Nasyr wa al-Tauzî', 2000.
- Undang-Undang Perbankan Syariah 2008 (UU No. 21 tahun 2008)*, Jakarta: Sinar Grafika, 2008.
- Zainuddin Ali, *Hukum Perbankan Syariah*, Jakarta: Sinar Grafika, Cet. II, 2010.