Configuring the Politics of the Development of the Religious Courts

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Abstract

The Message (Arabic: الرسالة, Ar-Risālah; also known as Mohammad, Messenger of God) is a 1976 epic historical drama film directed by Moustapha Akkad. This film tells the life and journey of Prophet Muhammad S.A.W. Released in Arabic (1976) and English (1977), The Message is useful as an introduction to the early history of Islam, from various disciplines that discuss issues of public interest, go beyond documentation and analysis, and take the quality of human life in religion and society as a criterion for their recommendations. The approach chosen in this article is to focus on one particular aspect, namely the focus on the political configuration of Islam in Indonesia. Religion is one field that produces relations with holy or divine reality. While religion cannot survive without a form of power, the form given to political play in power establishes a sign of religious identity. Today, critical studies of religious differences have gained the urgency of politics which is very powerful in influencing civilization. Religion can act as a cause, but also as a problem solver. To form multidisciplinary thinking it is necessary to study religious differences in the actual corridors.

Keywords: Religion; Islam; Development.

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INTRODUCTION

Historical episodes of the development of the religious court As a legal institution (read: legal institutions) Islam in Indonesia is always related to the social and political factors that surround it. The social setting of the nation has helped shape the face of the development of the Religious court as an Islamic legal institution in Indonesia. In fact this fact applies to all other agencies and social institutions. Therefore, it is no exaggeration to say that a religious institution (read: Religious court, pen.) Is difficult to understand without being associated with political institutions that develop in the midst of society.

This paradigm is supported by the thesis put forward by N.J. Coulson who said that law always lives and develops along with the rate of growth of the political situation that develops among the people. Sociologically this thesis can be justified because the implementation of a legal ideal and legal awareness in society is also formed by the socio-political configuration that develops in the order of social and state life. In this case, there is no exception, socio-politics developed and adopted by the regime of a government. On the one hand the government with all its might and effort wants to strengthen and perpetuate power and on the other hand Muslims want the application of Islamic law and the elevation of the religious judiciary as a vehicle for Islamic law enforcement. In this context it can be said that anything and anyone cannot escape from environmental influences social politics that surround it, both the law itself and other legal institutions, including the Religious court as a symbol of Islamic power in Indonesia.

The journey of the judiciary of Religion as a legal and religious institution in Indonesia always shows a continuous historical series that is marked by a struggle between the politics and institutions of Islamic law (read; the Religious Courts) which are sometimes impartial and beneficial to the continuity of this institution its existence. In turn what happened was a tidal wave of the political role of Indonesian Muslims. This tidal wave, seen in the archipelago's Islamic empire, then experienced a period of decline (stagnation) when Dutch colonialism began to establish its power (read; invaders) in the Indonesian archipelago. The Religious Courts again showed positive

development and growth when the Indonesian nation proclaimed its independence on August 17, 1945. However, in general the development of the Religious court in the history of the Indonesian nation has been moving for a longer period of uncertainty compared to its brightness, (Deliar Noer, 1988).

This condition is influenced by the attraction between the political interests of the government (rulers) and the political interests of different Muslims. On the one hand, the political motivation of the existing government creates a legal policy that promotes the values of secularism, arguing that Islamic law is not relevant to the social conditions of the Indonesian nation. In addition, it is also due to the consideration of pluralism that exists in the midst of Indonesian society. The consequence of this paradigm is that all legal political policies are formed and directed towards reducing the role of the law of Religion (Islam). That means that there is a tendency to eliminate (erase) the influence of Islamic law in the life of the Indonesian nation. Of course this automatically provides a negative influence on Islamic legal institutions (reading; the religious court). Whereas on the other hand Muslims perceive that Islamic law and its institutions (the Religious Courts) are part of the obligations of Religion and constitute a syar'iy call that must be carried out and maintained. It is believed that Islamic law is the only legal system that can deliver humans to the salvation of life in the world and in the hereafter. Neglecting Islamic law and its institutions is the same as ignoring Allah's commands. That means that anyone who ignores the syar'iy call means committing a sinful act and disobeying Allah for ignoring his laws. Therefore, all efforts to uphold the supremacy of Islamic law must be carried out maximally, (Abdul Halim, 2000).

The attraction between the two interests, it turns out, does not have a positive impact on Islamic law and the religious court in Indonesia. But it is precisely the interests of the state that benefit a lot. This is because the state has several forces that force it. Whereas Muslims in fighting for their interests do not have a force that is compelling and a reliable strategy. Even Muslims themselves are fragmented in various factions and interests. So that impressed Indonesian Muslims were not solid in fighting for their interests.

To reconstruct the history of the rising and falling tides of Islamic legal institutions can be seen from the development of the society itself. When the establishment and development of the Indonesian Islamic judiciary, in the condition of society which had not yet formed a large Muslim community, the enactment of new Islamic law was multazim bi nafsih (applies to itself) without any political force which pushed it because the Islamic community was not yet a government. This period is known as the era of tahkim. In this case, the community resolves the problem simply by appointing someone who is considered fair and wise.

At the beginning of the development of the religious court in Indonesia, its authority included the affairs of ahwal al-syakhshiyyah as a whole such as marriage, divorce, reconciliation, inheritance, hadhanah and so on, so that the religious court at that time was a general court for Muslims. But this did not last long, because the Dutch colonials set foot (read; colonize) in Indonesia, the religious court began to stagnate in its development. The Dutch colonial presence turned out to be a disaster for Indonesian Muslims. Dutch colonial came with its legal system (western legal system) and tried to apply it in its colonies (Indonesia). The existence of a Dutch colonial effort to impose western law in Indonesia, then by itself will strip the power of the Religious (Islamic) court in Indonesia. Freedom in carrying out Islam, gradually reduced. In the sense that the power of the Religious Courts continues to be minimized so that it becomes a justice that loses identity (power).

Along with efforts to enforce Western law by the Dutch colonial, the legal politics were launched, such as adatrechts politiek or receptie in complexu theori and receptie theori. All forms of policy and legal politics are carried out by colonial Dutch, although there are differences in form and legal policy, but basically this ultimate goal is none other than the estuary at one point of politics, it impera. This was done by the Dutch colonial government to hamper the widespread influence of Islamic law in Indonesia, which in turn would become a stumbling block to the preservation of its power in Indonesia. It is not even excessive to say that the Netherlands sees Islamic law as the most potential threat in destroying its power in the future. This concern is supported by a thesis that if the teachings of Islam (Islamic law) are close to Muslims, then he will give a strong doctrine (influence) to his followers. Whereas it was fully realized by the Dutch that what was done was contrary to the teachings of Islam. That means that Muslims who are close to the teachings of their religion will not submit to the Dutch. In turn it will give birth to a resistance.

The weakening of the political role of Muslims at that time was due to the fact that he was faced with a strong and dominant Dutch colonial political power. In addition to the solid strength of Muslims because it has been divided by the Dutch themselves. Dutch colonial efforts to weaken and reduce the role and position of Islamic law and the Religious Courts continued in various ways. It seems that the Dutch colonial effort was in vain, so that the religious court at that time experienced an uncertain period. The vagueness of the existence of the religious court is very felt when the Dutch with their legal politics become a religious court as quasi-judicial. In the sense that the religious court becomes a quasi court. It was said that because some of the decisions of the Religious Courts did not have legal force if they had not received ratification and recognition from the public court (Landraad). That means that even though the Religious court is recognized in the Dutch colonial justice system, it is nothing more than a mere name and symbol, because its authority and authority are almost at a loss. In this case it is not excessive if it is said that the Religious Courts at that time were manifested as ka 'adamihi (their existence is the same as their absence). Al-Mirah: Jurnal Pendidikan Islam ISSN xxx-xxx

Post-independence Indonesia, the portrait of the religious court has changed and a new face. At the very least, this change appears in the inaction of the receptie theory which is a major obstacle for the Religious Courts to actualize themselves in Indonesia. In addition, the organizers of the state are dominated by Muslims. Nevertheless, it turns out that this has not provided significant changes and developments and has provided a space for the Religious Courts as expected. The organizers of the state (government) even though the majority is Muslim, but there are still frequent clashes and even sometimes physical clashes between Muslims themselves with the government (this is evident in the DI / TII movement). Likewise there are ripples that arise due to concerns from non-Muslims. The debate on the basis of the state at the beginning of independence until the end of the Old Order's rule, has taken time and consumed considerable energy. In turn, it does not provide a significant change in conditions for the development and existence of the religious court. Likewise the political suspicion of Muslims which is a continuation of ideological friction caused the existence of a political antagonism which increasingly cornered the position of Muslims and championed the existence of Islamic law and the Religious Courts, (Salim, 2015).

This condition lasted until the beginning of the New Order's power which was marked by the fall of the Old Order regime. Then in 1989 the Number Law came out. 7 of 1989 concerning the Religious Courts which provided a strong existence for the Religious Courts in the Indonesian judicial system. Since the issuance of the Law, the Religious Court entered a new era in its development. In the sense that the religious court began to find the real light and existence. Religious justice problems which have often been disputed have begun to be answered. Therefore, it can be said that after the issuance of this Law it was a milestone for the Religious Courts in asserting its existence as an independent and authoritative court. In the sense that the Religious Courts find their identity as institutions of judicial authority in Indonesia as stated in Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power. Then in 1991 it was reaffirmed by the issuance of Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law which became a reference for the Religious Courts in carrying out judicial powers in the field of family law.

In this context, it turns out that the judiciary including the religious judiciary is not sterile from political influence as a social subsystem that grows and develops in Indonesia. In this case politics often intervenes on the actions and implementation of the law which in turn gives birth to a question about which subsystem is more supremative. It is on this basis that a study of the institutionalization of Islamic law is felt by examining the political configuration of the development of the judiciary Religion as an Islamic legal institution in Indonesia is very significant. So that in turn there will be found a strategy for the development of Religious justice in Indonesia as an important instrument in actualizing Islamic law in the order of the life of the nation and state, (Falola, T. 2001).

At this level it is also felt that the study of the Religious court as an Islamic legal institution in Indonesia and the political configuration that surrounds it, becomes an interesting and important segment to do. In the sense that the study of the institutionalization of Islamic law (reading; the religious court) in a political perspective in Indonesia is one of the efforts to place Islamic law and its institutions (read; the religious court) on a proportional position.

Research methods

The object of this study is the institutionalization of Islamic law in Indonesia, especially concerning the political configuration of the development of the religious court in Indonesia. This research belongs to the library research category, because the data source only comes from written material published in the form of books, magazines, newspapers and other sources that are considered representative and relevant.

In processing data, the authors tend to collect qualitative data, in the form of reviews, ideas, and opinions of experts or scholars, especially experts (scholars) of Islamic law. Classified data is then processed using data processing techniques and methods consisting of inductive methods (induction), which is to examine a number of specific data on problems that are the object of research and describe them in general and deductive (deduction) methods, namely a number of data of a nature general and syllogism developed for a coherent conclusion and comparative method, which is a comparison of the development of the Religious Courts, specifically the political influence on the development of the Religious Courts from time to time (there are at least three important periods namely the Islamic kingdom the archipelago, the colonial period and the period of independence).

Discussion

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The study of the institutionalization of Islamic law or Religious justice is one of the interesting studies and has study materials that are classified as rich. However, writings or studies that are specific and in-depth, have not been widely appointed or reviewed. Therefore, the author considers that the study of institutionalization of Islamic law in Indonesia which examines political configuration, including legal politics for the development of the Religious court is very important to do.

Experts, thinkers and practitioners of Islamic law and the judiciary of Religion have put their thoughts in various writings, both in the form of books, collections of writings and articles that are spread across several mass media. Some sources as study material relating to the institutionalization of Islamic law and Islamic law itself include: writing Bustanul Arifin entitled Institutionalization of Islamic Law in Indonesia, Historical Roots, Obstacles and Prospects. In Bustanul Arifin's article, it discusses some related to the institutionalization of Islamic law. starting from the history of the development of the Religious Courts, the existence of the Religious Courts and the prospects of the Religious Courts, (Geertz, C. 1971), (Wahid, 2014).

Furthermore, Cik Hasan Bisri has also written a lot about the Religious Courts as Islamic legal institutions in Indonesia in his book entitled Islamic Justice in the Indonesian Society and Religious Courts in Indonesia. In the second book Cik Hasan Bisri is clearly described about the Religious Courts in Indonesia. Even specifically discussed about the position of Islamic justice in the order of Indonesian society. The study of religious justice in a sociological perspective is also the theme discussed in his study. Even further Cik Hasan Bisri discussed the power of the Religious Courts, procedural law, legal products and prospects of the Religious Courts in Indonesia.

Writings on the Religious Courts are also included in several other expert writings such as: Abd. Halim, entitled Religious Courts in Legal politics in Indonesia, A. Muhaimin, entitled Remembrance of a Centuries of Religious Courts in Indonesia, Husni Rahim entitled Islamic Authority and Administration System in Palembang: Study of Religious Officials during the Sultanate and in the Colonial Period, M Djamil Latif, entitled Position and Power of the Religious Courts in Indonesia, Zainal Abidin Noeh and Abd. Basith Adnan entitled A Brief History of Justice in Indonesia, Notosusanto entitled Religious Courts in Java and Madura, Daniel S. Lev entitled Islamic Courts In Indonesia: A Study in the Political Bases of Legal Intitution, Nur Ahmad Fadhil Lubis entitled Institution and Unification of the Islamic Courts Under the New Order, and others.

Likewise there are other writings from several experts and thinkers for example; Institutionalization of Islamic Law in Indonesia: Prospect of Taufik's Religious Courts, Institutionalization of Islamic Law in Indonesia: Prospects and Roles of Religious Courts by Abd. Kadir, Religion and Islamic Law Court by Cik Hasan Bisri, Legal Aid and its Application in the Religious Courts by Abd. Manan, Legal Link Issues in Indonesia and Relation to the Environment of the Religious Courts by A. Gani Abdullah, and several other writings that were spread in various mass media that the author did not have time to mention one regulation, (Al-Atawneh, M. , 2009), (Pinney, 2004).

In addition there are also supporting materials such as Karel A. Steenbrik's article entitled Some aspects of Islam in 19th Century Indonesia, TB Hooker entitled Adat Law in Modern Indonesia, Juhaya S. Praja (Peny.) Entitled Islamic Law in Indonesia: Islamic Thoughts and Practices and Law in Indonesia Development and Formation, Suyuti Thalib entitled Receptie a Contrario (Relationship to Customary Law and Islamic Law), Muhammad Daud Ali entitled Islamic Law, Introduction to Law and Order of Islamic Law in Indonesia, Artidjo al-Kotsar and M. Shaleh (ed.) entitled Development of Law and Political Perspective of Law, Andi Rasdiyanah entitled Bugis Makassar and Map of Islamization of Indonesia, Amrullah Ahmad SF (Peny) entitled Dimension of Islamic Law in the Indonesian Legal System, and others.

Research result

In the midst of the chaotic legal life today, a responsive-responsive political law development strategy is needed as a way to encourage and accelerate the process of social emancipation of the lower classes of society. In line with the effort to find a new paradigm in the legal development strategy, Paul and Dias proposed a concept called an alternative approach to development. Through this concept, Paul and Dias set a collective group of people, especially the lower-level community groups as important stakeholders in the process of establishing laws relating to their interests. This concept requires the need to create a certain condition that can provide an opportunity for the growth and development of lower-tier community groups that organize their interests. Thus, Al-Mirah: Jurnal Pendidikan Islam ISSN xxx-xxx

the opportunity for collective groups to gain greater access to the judiciary must also be given. At the same time it also provides opportunities for growth and the existence of new institutions, such as arbitration institutions. The emerging institutions serve to bridge the interests between the collective groups of lower lapais and bureaucratic institutions. So that by itself can influence decisions or policies taken by State officials, (Rauf, (2005).

The dynamics of the Religious Courts cannot escape the political circle of the state. It was said that because at the beginning of independence (the old order regime), the Religious Courts did not experience significant development due to the lack of strong political will from the authorities. The authorities of state power, even though they are born to embrace Islam, but often show hostility towards religion (Islam), not even among Muslims themselves who have concerns about pressure from groups, which in turn give birth to a less responsive justice Religion as an Islamic law enforcement institution. Such conditions lasted until the beginning of the power of the New Order regime. The light of the development of the new Religious Courts was realized in 1989 with the issuance of Law Number 7 of 1989.

The attractiveness of political forces in the formation of the Religious Courts Act appears through the political dynamics played by Christians in Indonesia which tend to hinder any efforts towards the establishment and enactment of Law number 7 of 1989. There is an effort in the government to slow down the process of talks with various reasons, such as the consideration of timeliness which is considered to be able to shake the stability of the country, the issue of a concept that is considered to be still raw, and so on. In addition, it also appears with the existence of a secular nationalist and Christian alliance through the Indonesian Democratic Party faction with an attitude of refusing and attempting to derail the stipulation of the Law on Religious Courts. Meanwhile, sharp criticism also emerged from intellectuals, such as Franz Magnis Suseno, who doubted the judicial unit in Indonesia due to the existence of the Religious Courts, (Fauzi, 2005).

The political attitude of the new order (Soeharto) in taking the initiative to enact the Law on Religious Courts can be said to be something democratic and responsive-populistic, the cadre of legal products born reflects a sense of justice and fulfills the expectations of the majority. Likewise in the drafting process it provides a role for community participation. Because the sanctioning process is democratic, the results are responsive too. The political shift of the New Order regime was related to a shift in the pattern of relations between Islam and the state in an accommodative direction, , (Vogel, F. E., & Hayes, S. L. 1998).

The dynamics of the religious and political judiciary are seen in the process of making KHI which is then legitimized through Presidential Instruction No. 1 of 1991. The birth of KHI as the material law of the Religious Courts is inseparable from the political dynamics between Islam and the state. As a legal instrument, Presidential Instruction No. 1 of 1991 has pros and cons. On the one hand, it is assumed that KHI is determined through Presidential Instruction. The cultural particularisms coterminous with these borders early studies has been the misguided conclusion that religious violence, (Fauzia, 2013).

If the Religious Courts can fix themselves according to the trends of the era and human civilization, then in the future the Religious Courts will be more existent and brighter. This is not an exaggeration because along with the theory of Hazairin and Van Apeldorn who say that the law is rooted in morality, so also the law of marriage, inheritance law, endowments, grants and almsgiving are the competencies of the religious court, (Platzdasch, B. 2009). This situation is increasingly compounded by the public perception that this is God's commandment that must be obeyed, (Hallaq, W. B. 2005). Thus, implementing a religious court amar, means carrying out God's commands and vice versa violating the ruling of the Religious Courts means violating God's commands, (Geertz, C. 1976). . If this is the case, then the violation of the legal products of the Religious Courts decision, is not only felt as crime (violation), but also felt as sin (sin). With such confidence, if there is a dispute, Muslims will choose the Religious court to deal with it, (Bayly & Bayly, 1999).On the other hand it is recognized that globalization must be subject to the TINA doctrine (There is not alternative) and not optional, (Almond & Coleman, 2015). . Like or dislike, want or not, it must be faced with a well-planned strategy. If social change can result in social and personal disorganization in a country, then culture will place a nation thrown from international relations, (Elihami, E. 2016). Therefore, in addressing this condition, what must be done is a solid social planning and reform movement to make corrections to things that are not right in the community without eliminating national identity by utilizing national potential which exists, (Wallace, 2013).

Conclusion

Institutionalization of Islamic law experienced a tidal wave in its development, along with the ups and downs of the political role of Muslims in Indonesia. Institutionalisation of Islamic law experienced encouraging conditions during the period of the Islamic kingdoms in the archipelago, then stagnated in its development when colonialism ran rampant and penetrated the entire region in the Indonesian archipelago. Furthermore, in the early days of Indonesia's independence, parliamentary democracy and the new order, it could be said that the institutionalization of Islamic law rose slowly, although in the end it stagnated, except in the last half of the new order when the Islamic legal position was politically accommodative. However, in general, the history of institutionalization of Islamic law in Indonesia has more negative (negative) periods than in the positive (positive) period.

The political configuration of the development of the Religious Courts in Indonesia reveals a series of histories that cannot be separated from the struggle between political and Islamic legal institutions. The political configuration that developed in Indonesia sometimes took sides and benefited the development of the Religious Courts, and sometimes they were detrimental. A democratic political configuration will give birth to a condition conducive to the development of the Religious Courts, but on the contrary the authoritarian and closed political configuration creates conditions that adversely affect the development of the Religious Courts. Religious Courts as Islamic legal institutions have a very existential existence, because the Religious Courts have existed and have taken root in the life order of the people (Elihami, E., & Syarif, I. 2017). In addition to the judiciary, Religion is a necessity of society (Islam) in completing its cases in the field of family law. That is why the Religious Courts are always solid and exist in Indonesian circles, even though they have been hit by a storm in a long and tiring period.

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