



**Legislative Powers Inperspective Fiqih Siyazah
(Comparative Study with Legislative Power in Positive Constitutional Law in Indonesia)**

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Abstract:

Legislative power is one of the important elements in a modern state order, usually in a country it is known as the branch of power in charge of organizing the life process of the state, the executive, legislative and judicial branches of power that simultaneously work to realize the goals and ideals of the state, namely provide happiness and welfare for the greatest prosperity of its people. In this study, an analysis with regard to legislative power will be presented which the researcher emphasizes in a comparative study between the conception of legislative power in the perspective of Islamic constitutional law (fiqh siyasah) and the conception of legislative power in the context of positive constitutional law in Indonesia. This study uses a normative and descriptive analytical juridical approach as well as a comparative study to analyze topics related to legislative power in the perspective of siyasah fiqh and its comparison with legislative power in the perspective of positive constitutional law prevailing in Indonesia

Keywords: Legislative Power, Constitutional Law, Fiqh Siyazah

INTRODUCTION

study of the State as a community living together has played an important role in the realm of science, especially law that makes the State an object of study most important. It can be said that the development of human civilization today cannot be separated from human efforts in arranging the interaction pattern of life together which seems so complex to become a more dynamic pattern of interaction so as to realize collective ideals.

The state is associated as a life together which according to Kusnadi and Bintan Saragih is given the understanding that the State is a means to achieve a goal. The tool is in the form of an authoritative organization. Organization here is defined as a joint form that is permanent. Authority shows that the organization is obeyed by the people (Kusnadi and Saragih, 2008). The struggle of thinking about the State has passed a long historical trajectory along with human life from time to time.

Von Schmid (1980), in his book *Big Thinkers of the State and Law*, divides the phases of the development of thinking about the State into several eras, including the Ancient Age which began with Greek philosophers such as Plato (429-347 BC) and Aristotle (384-322 BC), Roman

thinkers such as Cicero (106-43 BC) and Seneca (AD 65). from antiquity then to the medieval colored by thinkers such as Thomas Aquinas (1225-1274 AD), continued to the sixteenth century there were thinkers such as Niccolo Machiavelli (1469-1527 AD) and Jean Bodin (1530-1535 AD), seventeenth century with thinkers including Thomas Hobbes (1588-1679 AD) and John Lock (1632-1704 AD) and the development of state thinking arguably reached its peak in the eighteenth century introduced by Montesquieu, Jean Jacques Rousseau and Immanuel Kant whose ideas inspired the state pattern. adopted by most countries in the world today.

The view regarding the development of thoughts about the State according to Von Schmid above portrays the growth of the state of mind in western thought literature, so that there is no visible portrait of the state of mind which in historical reality also grows in the eastern part of the world represented by the state of mind in Islamic thought. Harun Nasution in his book *Islam Viewed from Various Aspects*, as quoted by Ahmad Sukardja explained that Muslims became a free and independent community after in 622 AD moved to Medina, not long after moving to Medina, Muhammad saw made a political charter to regulate life together in Medina, the unity of life that was formed was directly led by Muhammad and became a sovereign state (Sukardja, 2012).

Sukardja (2012), explains that the political texts written by Muhammad SAW are mentioned by various names, for example W. Montgomery Watt named it *The Constitution of Medina*, while Zainal Abidin Ahmad and Ahmad Sukardja themselves chose to use the term "Medina Charter". If the word constitution (*Constitution*) refers to the conception mengenai written rules, habits, conventions constitutional determine the composition and position of the organs of the State, regulate relations between State organs and regulate the relationship between the organs of the State and citizens(Asshiddiqie,2012), then the political text written by Muhammad PBUH is an important state document, so that Medina with all the complexities of life has become a country and Prophet Muhammad is the head of its state. This historical reality cannot be denied that it has decorated the tamansari of constitutional knowledge with all the patterns, forms, organs or state institutions and state systems that have developed in state life in various countries in the world which are very dependent on the times.

With regard to the form of the State, the State system, as well as State organs or institutions developed by thinkers about the State, in fact, they experience a metamorphosis which is very dependent on the political agreements made by the founders of the State when a State is to be initiated, so that the constitutional pattern such as state organs or institutions in a country, it is also very dependent on the agreement and can change, depending on the political agreement determined in the decision-making mechanism in that country.

This simple article tries to address the problem of funding State institutions, especially regarding Legislative institutions which in the scientific literature that makes the State the object of study, of course the discussion regarding this Legislative institution has received serious attention in its discussion. Because it is an organ of the State that has a central role in the dynamics of the life of a State. More specifically, this paper intends to provide a description of the Legislative Institution in the perspective of Constitutional Law whose slice of thought is more on the study of western thought as developed in Von Schmid's study above and also describes the Legislative Institution in the perspective of Siyasah Fiqh which represents eastern thought as developed by Ahmad Sukardja and other scientists who are concerned in this field. This paper is expected to provide a simple comparison of the two state ideas (HTN and Fiqih Siyasah), especially regarding the idea of a Legislative Body.

RESEARCH METHODS

Zainuddin Ali (2010), in his book *Legal Research Methods*, says that legal research generally has a juridical normative and empirical juridical approach. The normative juridical approach besides referring to legal norms contained in statutory regulations and court decisions and legal norms in society, also sees the synchronization of rules and other rules hierarchically, while the juridical approach is empirical or sociology of law. is an approach that sees a reality in the midst

of society. The sociology of law approach is an approach used to view legal aspects of social interaction in society. This approach serves as a support to identify and clarify findings of non-legal material for legal research / writing purposes. Departing from this opinion, the writing of this study has a normative juridical approach type and empirical juridical approach.

This study also uses a descriptive analytical approach, it is said that because in this study to provide an explanation of matters relating to legislative power in the perspective of fiqh siyasah and legislative power in the perspective of positive constitutional law in Indonesia, it is necessary to describe the main points. discussion as intended.

DISCUSSION

About Legislative Power

Implementation of the State's function as the institutionalization of all the interests of the citizens can only be carried out if there are organs of the State working on behalf of the citizens to act to realize the ideals of a collective life which were built on the agreement when the State was first formed. The state apparatus is referred to as a State institution or State organ. In research and investigation into the practice of the life of the state, many philosopher have expressed views regarding the nature and form of the State institution itself.

John Lock in his monumental work *Two Treaties on Civil Government* separates State power into legislative, executive and federative powers (the power to conduct foreign relations), half a century after that Montesquieu developed Lock's mind so that he idealized that the branches of State power should be separated between legislative, executive and judicial powers. . Montesquieu argued that the federative power that Lock meant as the power to freeze foreign relations was actually the power already included in the power exercised by the executive power.

The construction of the idea of the distribution of State power above in the legislative branch of power has urgency in the role of representing the desires of citizens. So that the accumulation of desires in realizing common goals in the life of the state can be represented or represented by an organ of the State, in this case a representative institution which among its functions is attached to legislative power, Margarito explained that the people's will will not have a predicate of norms, let alone imperative which functions as a basis. or benchmarks for state administration, without being specifically formulated by the legislative body (Thursday, 2014).

Legislative Institutions in the Perspective of Constitutional Law in Indonesia

The study of Constitutional Law in principle investigates the origin of a State being established, and further examines the form, system and completeness of State organs or institutions and the functions of the various State institutions concerned. The Legislative Body has taken a central role in modern state life today, to the point that Margarito said that it is not insignificant for the other two organs of the institution (the executive and the judiciary), but that the organs of legislative power are at the heart of creating a behavior scheme or the authority of the other two organs. The legislative power organs construct and authorize their powers. The legislative organ is the key to the formation of the entire system of life as a nation and state, as well as the key to the establishment of the legal system (Thursday, 2014).

The legislative institution as explained above can be said to be a state power that has the authority to make law in one system of people's representative institutions, in general this people's representative system is discussed into two systems which are generally known in the study of Constitutional Law namely the two- *chamber system (becameral system)* and a one-room *system (unicameral system)*. The bicameral system is generally used by the federal state or whose governmental mechanism is in the form of a kingdom, for example in the British kingdom or in the United States, while unicameral in practice, for example, occurred in Indonesia before the amendment to the 1945 Constitution of the Republic of Indonesia by placing the People's Consultative Assembly as a supremacy that holds full people's sovereignty so that the existence of other state institutions has become apparent (Tutik, 2010).

In terms of the power function of the legislative body, according to Saldi Isra it is called a legislative function which is a function for the formation of laws (Isra, 2013). Meanwhile Asshiddiqie (2010), as quoted by Saldi, states that the function of legislation involves four forms of activity, namely, first, *legislative initiation*; second, discussion of the draft law (*law making process*); third, approval of the legalization of the law (*law enactment approval*); and four, the granting of binding agreements or ratification of international treaties or agreements and other binding legal documents.

Quoting Lawrence Dood and Bryan A Garner, King Faisal (2013), wrote that the duties and powers of representative institutions can be grouped into, a. as a people's representative institution that oversees the running of government carried out by the executive power holders so that government power does not oppress the people so that power is not exercised arbitrarily. b. as the holder of legislative power to carry out the desires of the people and interpreted in law and also as a constitutional maker (*supreme legislative body of some nations*).

The mechanism for filling positions to occupy legislative power is generally practiced by countries in the world today with the general election process, but there is also the practice of filling legislative positions by being appointed or appointed, for example in Indonesia before the constitutional amendment or as in Britain at the time. feudal institutions whose legislature is only occupied by aristocrats and religious leaders as well as landlords whose institutions are called the *House of Lords*, after this country underwent a major change, legislative power could finally be occupied by citizens in general who were elected through general elections to occupy the institution called *House of Common*.

Legislative Power in the Perspective of Fiqh Siyasa

In the study of the Siyasa Fiqh, the three powers as described above, namely the executive power or running the government are called *al-sulthah al-tanfidiyah*, the legislative power that has the authority to form laws is called *al-sulthah al-tasri'iyah*, and the judicial power which has the power to judge every dispute called *al-sulthah al-qadha'iyah*. (Sukardja, 2012).

Legislative power in Fiqh Siyasa is called *al-sulthah al-tasyri'iyah*, which is tasked with forming a law that will be enforced in society for the benefit of all. Abdul Wahab Khallaf in the book *Al-Siyasa Al-Syar'iyah* as quoted by Sukardja explained that the people who sat in the legislative body consisted of mujtahids and fatwa experts (mufti) as well as experts in various fields . (Sukardja, 2012).

Sukardja (2012) further explains that establishing sharia is actually only the authority of Allah, so the authority and duties of the legislative body are limited to exploring and understanding the sources of sharia, namely the Koran and Sunnah and explaining the laws contained therein. Besides, the regulations produced by the legislative body must rely on the Koran and Sunnah.

According to Muhammad Iqbal in Sukardja, there are two functions of the legislative body. First, in matters where the provisions are already contained in the Koran and Sunnah, the law issued by *al-sulthah al-tasyri'iyah* is a divine law that is stated in the Koran and Sunnah. However, this is very little because in principle the two sources of Islamic teachings talk about global issues and very few explain a problem in detail. Second, doing creative reasoning (ijtihad) on issues that are not explicitly explained by the Koran and the Sunnah. This is where it is necessary for *al-sulthah al-tasyri'iyah* to be filled by mujtahid and fatwa experts . (Sukardja, 2012).

In other literature, legislative power (*al-sulthah al-tasyri'iyah*) is referred to by using the terms *ahlu shura* or *ahl al-hall wa al-aqd*. HA Djazuli stated that *ahl al-hall wa al-aqd* is an institution that has the following powers:

1. *ahl al-hall wa al-aqd* is the highest authority who has the authority to elect and take thepledge of the imam.
2. *ahl al-hall wa al-aqd* has the authority to direct people's lives to the maslahat.
3. *ahl al-hall wa al-aqd* has the authority to make laws that are binding on all people in matters that are not strictly regulated by the Qur'an and Hadith

4. *ahl al-hall wa al-aqd* where the consulted *imam* is in determining his policies.
5. *ahl al-hall wa al-aqd* oversees the running of the government, powers number 1 and 2 are similar to the MPR, powers number 3 and 5 are the authority of the DPR, and authority number 4 is the authority of the DPA in Indonesia prior to the amendment of the 1945 Constitution (Djazuli, Siyasaah, 2013).

CONCLUSION

Legislative power is one of the most important elements of power in the modern state structure, the authority for the formation of law that is inherent in the legislative power makes this branch of power the main pillar in the construction of a rule of law. In the context of positive constitutional law in effect in Indonesia, the legislative power as stipulated in the 1945 Constitution of the Republic of Indonesia, it can be explained that the legislative power has function:

- a. initiative lawmaking (*legislative initiation*);
- b. discussion of the draft law (*law making process*);
- c. approval of the legalization of the law (*law enactment approval*);
- d. granting binding approval or ratification of international treaties or agreements and other binding legal documents provisions

Islamic law recognizes in the field of Constitutional Law with the term *Fiqh Siyasaah*, in the context of *Siyasaah Fiqh*, the legislative power of its function and authority can be found in one of the pillars of power which it is called *ahl al-hall wa al-aqd*, which in fact the explanation can be expanded by dividing it into several branches of power, because the power of *ahl al-hall wa al-aqd* is not limited to the formation of laws alone. However, in the segment of directing the lives of the people in order to reap benefits in their lives.

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