

# Comparison of the Value of Welfare Principles in National Law and Islamic Law

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Keywords	ABSTRACT
<p>Law, Welfare, Principle Values</p>	<p><i>The welfare state does not only include ways of organising welfare or social services but also emphasises that every person receives social services as a right. The polarisation of the main objectives of the welfare state is formulated, which is essentially intended to determine indicators as measuring tools in assessing whether society is prosperous or not. Talking about the concept of a legal state, Islam, as a perfect religion, also has a concept of statehood. The approach method in this research is normative legal research (normative juridical). The type of research used in this research is descriptive research. The data sources obtained from the author are data sources for primary legal materials and secondary legal materials. The data collection method used in this research is a literature study. The data analysis method used in this research is qualitative. The results of social welfare that are currently developing show that there are citizens whose rights to their basic needs have not been fulfilled properly by the state. As a result, there are still citizens who experience obstacles in the implementation of their social functions and are unable to live a life in a decent and dignified manner. Islam is not just a religion that contains a set of ritual doctrines, but Islam is a holistic worldview that is comprehensive and systematic. Islam as al-din covers all aspects of human life, including state and legal aspects.</i></p>

## INTRODUCTION

Indonesia is a country of law, and this has been explained in Article 1, paragraph (3) of the 1945 Constitution, which states: The State of Indonesia is a country of law. This is based on the explanation of the 1945 Constitution that the Indonesian state is based on law (*rule of law*) and is not based on power alone (*power state*). The state must not carry out its activities based on mere power but must be based on law. In Indonesia, the government's regulations on the people are based on State Administrative Law.

Some interactions in society are positive, and some are negative. Positive interactions cause positive things for the surrounding community, while negative interactions cause damage that impacts society as well. So, in this case, the need for a state (Constitution) to regulate human life is very urgent. The function of the state to regulate human life is in the form of a regulation or law, both written and unwritten. Besides functioning as a regulator, this law is also a tool to coerce, and limit the behavior of its people and provide sanctions against violators. This law (Constitution) must also be flexible with developments over time.

The importance of law in state life is to manage and regulate all social life. Without law, humans would be messy and directionless, and crime in the world would be rampant. So, the importance of law in this case is very urgent, both in social, state, and religious life. In this case, Islam views the state as not

only related to world interests, but the aim of establishing the state in forming laws aims to preserve religion, soul, reason, offspring, and property.

Considering that the Shari'a does not provide standard rules regarding political systems and government, Muslims must try to bring out the legal values contained in the Shari'a so that the most likely formulation can be found to translate these values into the life of the nation and state. In discussing the state, there is no agreed definition of the state. However, in general, it can be used as a guideline - as is commonly known in international law, a state usually has three main elements, namely (1) The existence of a people (2). The existence of territory (3). The existence of a sovereign government. The meaning of the state is not only based on a social agreement (social contract) but also the basis of humans as God's caliphs who carry out His authority and mandate. In carrying out this life, humans must comply with His commandments to achieve prosperity in this world and the hereafter. Thus, in general, it can be interpreted that humans must always pay attention to and implement the commandments of *ma'ruf* and evil, meaning that humans must do good and prevent damage.

Talking about the concept of a legal state, Islam, as a perfect religion, also has a concept of statehood. On the conceptual plane, in line with scientific developments among Muslims, thinking regarding the state system also developed. This thought, in scientific conception, is formulated as Islamic politics, *al-Siyasah al-Syar'iyah*, or referred to in al-Mawardi's theory *asal-Ahkam al-Sulthaniyyah*. This conception attempts to reflect efforts to find an intellectual basis for the function and role of the state or government as an instrumental factor in fulfilling the interests and welfare of society, both physically and mentally.

## METHODS

This research approach is normative legal research (Yadnya & Wibawa, 2020). Soerjono Soekanto defines normative legal research as a literature examination (Soekanto, 2009) which will obtain information relating to the values and principles of welfare for the wider community in a country, both in terms of national law and Islamic law. The type of research used in this research is descriptive research to clearly describe various things related to the object under study, namely describing the urgency of the principles and values of the welfare of the rule of law so as to give rise to the values of justice both in national law and Islamic law in Indonesia. The data sources obtained from the author are data sources for primary legal materials and secondary legal materials. The data collection method used in this research is a literature study. The data analysis method used in this research is qualitative.

## RESULTS

### A. The Concept of the State in General and Islam

The state is an association that carries out order in a society in a region based on a legal system organised by a government, which, for this purpose, is given coercive power. According to Meriam Budiaharjo, the state has two tasks. First, controlling and regulating asocial phenomena of power, namely, those that conflict with each other, so that they do not become dangerous antagonisms. Second, organising and integrating human activities and groups towards achieving the goals of society.

Therefore, the state has coercive, monopolistic, and all-encompassing characteristics (*all-encompassing, all-embracing*). What is called a state must, of course, have several elements that must exist in a state, which include territory, population, and government. The goal of every country is to create happiness for its people. According to Harold J. Laski, a political expert, the function and purpose of a state are the "creation of those conditions under which the members of the state may attain the maximum satisfaction of their desire".

Meanwhile, in the historical context of the practice of countries so far, there are several types of rules of law, namely, the police state (*police state*), liberal legal state, formal legal state, and material legal state. Franz Magnis Suseno saw that the state should run by using law as a guide, seen

from a political and moral perspective, because it will have several ethical arguments, namely, for the sake of legal certainty, demands for equal treatment, democratic legitimacy, and demands of reason.

The objectives of the Indonesian state are as intended in the Preamble to the 1945 Constitution, namely:

"To protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice based on: Belief in the Almighty God, just and civilised humanity, unity Indonesia, and the people who are led by wisdom in representative deliberations and by realising social justice for all Indonesian people."

A leading Islamic scholar who formulated the concept of a modern Islamic state, namely Rasyid Rida, stated that the main premise of the concept of an Islamic state is sharia. According to them, Sharia is the highest source of law. In Rasyid Ridho's view, Sharia must require the assistance of power for the purpose of implementing it, and it is only possible to implement Islamic law with the existence of an Islamic State. Therefore, the application of Islamic law is the only main criterion that determines the difference between an Islamic country and a non-Islamic country.

In the relationship between religion and the state, religion occupies an important position as a truth that must be realised and become the basis for a country's development. Religion has four roles in a country: religion as a unifying factor, religion as a driver of the success of the political process and power, religion as the legitimacy of the political system, and religion as a source of morality.

Maududi conceptualised two goals of the state in Islam. First, uphold justice in human life, stop injustice and destroy arbitrariness. Second, enforce the system regarding establishing prayers and issuing zakat through all the power and methods owned by the government. A system that forms the most important corner of Islamic life so that the state spreads goodness and righteousness and orders what is virtuous, as the main goal of Islam's arrival into the world. Apart from that, the state must cut the roots of evil and prevent evil, which is something that Allah most hates.

Meanwhile, Fazlur Rahman believes that an Islamic state is a state founded or inhabited by Muslims to fulfil their desire to carry out Allah's commands through His revelation. Regarding how to implement state administration, Fazlur Rahman did not format it rigidly, but the most important element that must be had is shura' as the basis. With the existence of the Shura institution, ijihad is certainly needed from all competent parties. Thus, said Fazlur Rahman, it is possible that between one Islamic country and another Islamic country, the implementation of Islamic sharia will be different because it depends on the results of the ijihad of the mujtahids in the country concerned.

The Islamic State has the aim of maintaining the safety and integrity of the state, maintaining the implementation of law and order, and developing the state. In Islam, the state has the role of maintaining religion, taking care of the people, maintaining security and safety, and maintaining harmony with other religions. The state also plays a role in realising the beliefs and values of Islamic teachings as well as carrying out the role of the caliphate, which brings prosperity and security, in contrast to secularism, which ignores religion and separates the state from religious rules. The state will interfere in religious matters if there is something that could be detrimental to the state.

Other figures, such as Muhammad Imarah, also emphasised that Islam is both a religion and a system of government. Furthermore, he explained that in the secular (Western) sect, there is a separation between religion and the state. Meanwhile, Islam holds the view that there is a

relationship between faith, sharia, religion, and government (dawah). Islam is not a purely spiritual message. Government in Islam is very different from the understanding in Western thought.

#### **B. The Value of the Principles of State Welfare in National Law and Islamic Law**

The development of social welfare is an embodiment of efforts to achieve the nation's goals as mandated in the 1945 Constitution of the Republic of Indonesia. The fifth principle of Pancasila states that social justice is for all Indonesian people, and the Preamble to the 1945 Constitution of the Republic of Indonesia mandates the state to protect the entire Indonesian nation and all of Indonesia's bloodshed, advancing general welfare, making the nation's life intelligent, and participating in implementing world order based on independence, eternal peace, and social justice.

The welfare state theory was introduced by Spicker, who defined the welfare state as a social welfare system that gives a greater role to the state (government) in allocating a portion of public funds to ensure the fulfilment of the basic needs of its citizens. The welfare state is intended to provide social services for all its residents as best and wherever possible. In a concept of a state based on law, the law must be seen functionally so that, in the end, the law is understood or understood as a collection of values for state and social life. These good values are then used as input for the implementation of state administration, in this case, related to the making of policies in the field of law (Asep et al., 2008). Indonesia has chosen the rule of law (welfare state) as the form of the state.

The substance of the welfare state concept is that the state is obliged to provide welfare to its people by providing services, facilities, and infrastructure for the community. All basic needs of society, such as education and health services, are the duty and responsibility of the state, and the reflection or symbol of a country with independent status is the Government, in this case, represented by the President. In this way, the Government, in accordance with the state constitution, has the authority and function to realise general welfare, as intended in the Preamble to the 1945 Constitution of the Republic of Indonesia. The Government will, of course, be consistent and strive to provide respect, protection, and fulfilment of the rights to the basic needs of its citizens. The Government must carry out this effort as a top priority by grounding the universal values of Pancasila, such as social equality and justice, which are the spirit of welfare development. The government must be based on a welfare state approach that prioritises empowerment and social protection.

Before explaining how M. Tahir Azhary thinks about the general principles of the rule of law in Islam, firstly, it needs to be stated that the principles of the rule of law in Islam used in this description are the term "Islamic Nomocracy" used by M. Tahir Azhary in his writing which discusses the concept of the rule of law from an Islamic perspective, one of which is the principle of welfare.

The word "principle" in the Big Indonesian Dictionary is defined as "foundation" or "principle" (the truth that is the basis for thinking, acting and so on). In this way, what is meant by principles in this description are the basics or principles of fundamental truth, instructions for moral regulations contained in a teaching that serves as a basis for human thinking, acting, and behaving in managing a country.

According to M. Tahir Azhary, the principle of welfare in Islamic nomocracy aims to realise social justice and economic justice for all members of society or the people. State administrators and society bear this task. The meaning of social justice in Islamic nomocracy is not just about fulfilling material or material needs but also includes fulfilling the spiritual needs of all people. The state is obliged to pay attention to these two types of needs and provide social security for those who lack or cannot afford it. The Qur'an has determined several sources of funds for social security for members of society guided by the principles of social justice for members of society guided by the principles of social justice and economic justice. These sources of funds include zakat, infaq,

sadaqah, grants and waqf, without covering the possibility of state revenues from other sources, such as taxes, duties, etc.

In Islamic nomocracy, social justice and economic justice are intended to prevent hoarding and wealth in the hands of a person or group of people or group of people while other members of society experience poverty. One of Islam's missions is to fight poverty, at least eliminating the gap between underprivileged people.

To realise this principle of prosperity, which in the Qur'an is formulated with the words "*baldatun thaybatun warabun ghafur*", namely a prosperous country brought by Allah's blessing. The state is obliged to regulate and allocate sufficient funds for social security purposes for those who need it. Social security includes unemployment benefits, parental benefits (people of retirement age), scholarships for those studying science and so on. The state is also obliged to provide facilities for worship, education, orphanages, hospitals and so on.

In Islamic nomocracy, there is only one motivation for implementing the principle of welfare, namely the Islamic doctrine of "*hablun min Allah wa hablun min al-nas*", namely the aspect of worship and *mua'malah*. In other words, the realisation of the principle of welfare is solely aimed at realising social justice in society in accordance with the commands of Allah SWT.

In contrast to Western countries, the implementation of social welfare has a dual motivation, for example, social security for company workers. In terms of allowances, it is driven by the interests of the company's establishment because it wants to protect its capital. This allowance is intended as an incentive for workers to increase their productivity. In other words, the allowance has a positive effect on the company. Viewed from the perspective of workers' interests, people will judge that the allowance contains humanitarian motivation. However, the first motivation is dominant because the capitalist economic system always prioritises the interests of their capital. Even if social security must be given, the calculation of company profits and losses must be addressed.

## CONCLUSION

The development of social welfare today shows that there are citizens whose rights to their basic needs have not been fulfilled properly by the state. As a result, there are still citizens who experience obstacles in the implementation of their social functions and are unable to live a life in a decent and dignified manner. Therefore, an understanding of the most important value in the world of law has emerged, namely, to understand the concept of legal position in realising an ideal legal system in Indonesia so that the welfare state context can be realised.

The state also plays a role in realising the beliefs and values in Islamic teachings, including carrying out the role of the caliphate, which brings prosperity and security. Islam is not just a religion that contains a set of ritual doctrines, but Islam is a holistic worldview that is comprehensive and systematic. Islam *asfrom* covers all aspects of human life, including state and legal aspects. One of the principles in a legal state based on Islam (Islamic nomocracy) is the principle of welfare, where this principle has values and is absolute and has eternal and universal validity. The principle of welfare in an Islamic legal state (Islamic nomocracy) is relevant to the Indonesian constitution because the basic principles contained in Islamic nomocracy are deliberation, justice, free justice, protection of human rights, obedience of the people, equality, and constitutional freedom.

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