Islamic Legal Review on the 2017 Law concerning Mass Organisations on the Prohibition of Mass Organisations from the Perspective of Uṣūl Fiqh

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Abstract

The Indonesian Government, on July 10, 2017 has issued a Government Regulation in lieu of Law 2 2017 concerning Amendments to Law Number 17 of 2013 concerning Mass Organizations (for further, I use "the GR" to refer to it and without "the" for other GRs). The presidential decree has led to the occurrence of pros and cons for the issuance of the GR. Public noise is inevitable. The people, the nation, and national figures were divided into the pro and contra camps. Of course, each camp claimed that it was right. With this article writing intends to unravel the problem. This research uses descriptive qualitative method, in which the researcher intends to know something about what and how Islamic law responds to the issue. By describing research data and analyzed to obtain conclusions. With this research, I will describe the GR and their review according to Islamic law perspective uṣūl fiqh. It is a real effort to close all gaps and paths to obedience that will be caused by the dangers of radicalism and communism and its policies do not violate the provisions of benefits built by Islamic law.

Keywords

Islamic law, Mass Organisation Law, uṣūl fiqh

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Introduction

The relationship between Islam and the state in Indonesia can be seen from historical and legal facts. It is explained that for a state that adheres to the theory of popular sovereignty, it is the people who are the highest political authority. Similarly, for a state based on divine sovereignty, the sovereignty of the state or power (*rechtstaat*) and a state based on law (*machtstaat*) are highly dependent on the political style of the state's legal power itself (Gunawan 2017). Rousseau explains in his theory of popular sovereignty that the purpose of the state is to uphold the law and guarantee the freedom of its citizens, in the sense that freedom is within the limits of the law. The people referred to by Rousseau are not the sum of individuals within the state, but rather a unity formed by individuals who possess a will, a will that is derived from those individuals through a social contract. This will is the general will (*volonté générale*), in which all citizens directly participate in the process of law-making (Soeprapto n.d.).

The pros and cons surrounding the issuance of the GR were heated. Socio-political unrest and legal turmoil were inevitable. The public, the nation, and national figures were divided into pro and con camps. Naturally, each camp claimed that it was right. Those who were against it included HTI, ACTA, the Nusantara Kuasa Alliance, Advocate Afriady Putra, the Sharia Law Alqonuni Foundation, the Islamic Unity Centre, and the Indonesian Islamic Propagation Council. The 29 September 2017 protest, or Aksi 299, was attended by around 50,000 people, including those opposed to the GR. Meanwhile, the Pancasila Guardians Advocates Forum and the Indonesian National Advocates Secretariat are among the groups in favour of the GR. Beyond those mentioned above, there are undoubtedly many other groups divided into these two camps.

Indonesia is one of the countries in the world that consumes a lot of rules and legal systems. It is not uncommon for legislation created by the legislative body to generate a lot of pros and cons. One of the current issues is the ratification of the GR of Mass Organization into the 2017 Law concerning Mass Organisations (Kami 2017). Many academics and politicians have been arguing with each other, and even a professor has been brought in by the Indonesian House of Representatives specifically to discuss the conversion of the GR into law. Not all of the contents of Law No. 17 of 2013 were revised through the GR, which has now become the Mass Organisation Law. One of the most notable provisions that has been amended is

Article 59 and 60 regarding the prohibition of Mass Organizations and the sanctions for Mass Organizations that violate the regulations (UU No 16 2017).

On the one hand, opponents believe that the law on mass organisations will sow the seeds of a new authoritarianism that threatens democracy and freedom of association and assembly. They are even planning to file a judicial review with the Constitutional Court. The public is also becoming increasingly agitated because they are faced with opinions that claim that there is actually no compelling urgency behind the passing of this law on mass organisations. Various opinions have emerged in the media, seeking to convince the public of the academic truth by presenting different perspectives. It is therefore appropriate that this phenomenon has sparked speculation and public unrest.

The existence of the Law on Mass Organisations certainly creates a dilemma and a predicament for the government. If this law is not enacted, radical and intolerant mass organisations will continue to grow rapidly in spreading their doctrines, which could lead to a change in the ideology of the state. In fact, the spread of these doctrines is carried out through meetings, radical actions, and actions aimed at gaining public sympathy, the media, and others. Of course, the government has actual data that cannot be disclosed to the public. However, on the other hand, if this Law on Mass Organisations exists, it is considered to infringe upon the freedom of association, assembly, and expression, as guaranteed by the constitution. It is on this basis that the dilemma arises (Tabayun Kemerdekaan 2017).

Here, the author feels that the use of *uṣūl fiqh* as an analytical tool in analysing and reviewing laws on mass organisations is important. Historically, *uṣūl fiqh*, as a discipline that has long existed in Islamic and world civilisation, has made a significant contribution to the methodology of thinking in the field of Islamic law. In reality, *uṣūl fiqh* is not a discipline that was specifically taught by the Prophet. The emergence of *uṣūl fiqh* is attributed to the efforts of Imam al-Shafi'i through his book *al-Risālah*, with the aim of assisting in the understanding of both the Quran and hadith (Rachmat Syafe‟i n.d.-b). Considering the above explanation regarding the phenomenon of the law on mass organisations and all the debates surrounding it, as well as the study of *uṣūl fiqh*, to what extent can the law on mass organisations created by the government be considered a regulation that brings benefits or is it instead considered harmful to the Indonesian people?

Studies on *uṣūl fiqh* can be said to have been conducted extensively by both classical and contemporary scholars who possess and master a wide range of knowledge in various fields. Studies on *uṣūl fiqh* are considered important in the development of Islamic thought, so that studies and research on this subject will never cease. In previous studies, reviews and research on *uṣūl fiqh* in the derivation of Islamic law and contemporary issues have been conducted by scholars of *uṣūl fiqh*, both classical and contemporary. However, generally, the studies were conducted briefly alongside other themes (Sariyekti 2022).

Sadd al-dharīʿah and Its Application in the Fatwas of the Indonesian Ulema Council is a dissertation at the Post-Grad School of UIN Syarif Hidayatullah Jakarta written by Muhammad Asrorun Ni'am bin Sholeh in 2008. The purpose of this research is to determine the position and validity of *sadd al-dharīʿah* in the derivation of Islamic law, particularly in the fatwas of the Indonesian Ulama Council, as well as how *sadd al-dharīʿah* is applied in the fatwas of the Indonesian Ulama Council.

The role of MUI in addressing contemporary issues with the concept of *sadd al-dharīʿah*: an analytical study of MUI fatwas on the deployment of female workers abroad. This thesis analyses the application of the *sadd al-dzarî'ah* method in MUI fatwas on female migrant workers working abroad.

The paper on the role of *uṣūl fiqh* in the formation of law (Analysis of Sources of Legal Evidence) was written by Hamzah Hasan from the State Islamic Institute (IAIN) Palopo.

Reading 'Political Interests' Behind the Mass Organisation Government Regulation and Its Sociological Implications on Society by Prof. Dr. Sudjito, SH., MS, Professor of Law at the Faculty of Law, UGM.

Theoretically, this research is expected to contribute to the body of knowledge on Islamic law, particularly regarding the Islamic legal perspective on the enactment of the 2017 Law concerning Mass Organisations from the perspective of *uṣūl fiqh.* This research is also expected to provide insights into the relevance of *uṣūl fiqh* as a method for deriving Islamic law, applied as an analytical tool in the context of the development of legislation in Indonesia. From an applied perspective, the results of this study can also serve as a source of inspiration and reference for researchers of Islamic law and legislation in Indonesia, including policymakers, in

the development and application of law, particularly in the constitutional sphere in Indonesia today. Thus, practically speaking, this research is expected to contribute to the development of law in Indonesia.

Method

A research method is very important in order to ascertain the truth in a discussion and to obtain objective, systematic and valid data. Therefore, research requires a method so that its truthfulness is beyond doubt. In its definition, a research method means activities based on rational, empirical and systematic approaches to obtain valid data for specific purposes and uses (Sugiyono n.d.). The author will explain several points regarding the research methodology that will be used in this study.

This type of research is descriptive qualitative, in which the researcher aims to find out the state of something in terms of what, how, to what extent, and so on. By describing the research data with words or sentences separated according to category and analysed to obtain conclusions (Suharsimi Arikunto 1992). In this study, the author will describe the provisions of the 2017 Law concerning Mass Organisations and review them in relation to *uṣūl fiqh.* This study also falls under the category of library research. Library research is an effort to collect data using written library sources. In other words, this type of research focuses on researching what is written in books and other references.

The data sources in this study are divided into two categories. First, primary data sources are materials or documents obtained from the original source (Syaifudin Anwar 2006). The primary data sources used by the author in this study are books containing information about *waqf* and its legal regulations. Among the books or texts that will be used as the main reference sources are the following texts. Second, secondary data are additional or supporting data sources derived from written sources such as books, magazines, archives, official documents, and others (Lexi J Moloeng n.d.). The secondary data in this study are books on the principles of Islamic jurisprudence that are related to the discussion that the author will examine, such as Imam Syatibi's *al-Muwafaq āt*, Rahmat Syafii's *Ilmu Ushul Fiqih*, etc.

This research uses the documentation data collection method, which is a method of collecting and recording data from books, monumental works, or documents related to the material being discussed. The author will collect and

compile data from the main sources related to the discussion, namely books on *uṣūl fiqh* and data on the 2017 Law concerning Mass Organisations.

Results and Discussion

Legal Study on the Issuance of the Government Regulation (the GR)

In the narrow view of the *trias politica* theory, the power to make rules lies with the legislative branch, namely the government headed by the president. In Indonesia, this theory is not applied rigidly. One example is Article 22 paragraph (1) of the 1945 Constitution, which grants the president the power to issue government regulations in lieu of laws. This demonstrates that the executive branch is not merely an executor but also a rule-maker. To issue a GR, the president must meet certain conditions, namely that the situation involves 'compelling urgency.'

In terms of authority theory, the issuance of a GR is an authority held by the President based on Article 22 of the Constitution, which is an attributive authority as mandated by the Constitution. Based on Article 22 of the 1945 Constitution, which states that:

1. In cases of compelling urgency, the President has the authority to issue government regulations in lieu of laws;
2. Such government regulations must obtain the approval of the People's Representative Council in the next session;
3. If approval is not obtained, the government regulations must be revoked.

This means that a GR is a form of legislation issued by the President without requiring approval from House of Representatives (the DPR) due to an emergency situation, and if the situation has returned to normal, the GR must be reconsidered to obtain the DPR approval. Government Regulations in Lieu of Law, or a GR, are legislative products issued unilaterally (by the executive branch) that are similar in nature to ordinary laws. In terms of their legal standing, laws and GRs have the same legal standing (Kementerian Sekretariat Negara RI 2011).

Overview of Government Regulations in Lieu of Laws

Government Regulations in Lieu of Laws are conceived in the same way as ordinary laws, but due to urgent circumstances, they are enacted in the form of government regulations (Jimly Ashiddiqie 2007). According to Bagir Manan, what is

meant by a substitute for a law is that the content of a GR is the content of a law. Under normal circumstances, such content must be regulated by law.

As an emergency regulation, a GR contains restrictions. First: a GR is only issued in cases of compelling urgency. In practice, compelling urgency is often interpreted broadly. It is not limited to situations involving urgency or threat, but also includes needs that are considered urgent. Who determines compelling urgency? Since the authority to issue a GR lies with the President, it is the President who legally determines compelling urgency (Jimly Ashiddiqie 2007). Secondly, GR is only valid for a limited period of time. The President must submit GR to the House of Representatives for approval no later than the next House session. If approved by the House, GR becomes law. If not approved, GR must be revoked immediately (Undang-undang and Nazriyah n.d.).

Emergency laws or GR are intended to refer to regulations with the force of law as a substitute for laws made in cases that need to be regulated immediately, so that it is not necessary to wait for the approval of the House of Representatives first. Emergency legislation is a law that regulates situations of danger, including the conditions under which a state of danger may be declared and the legal consequences following such a declaration (Malik 2016).

Special Review on Matters of Urgent Necessity

In essence, a GR is a regulation issued by the president to anticipate extraordinary circumstances, so that in order to maintain the stability of the state, a GR can be an alternative to maintain the impartiality of the state. Constitutionally, it is the president's right to issue a GR, but it must also be approved by the DPR in the following session. If approval is not obtained, the GR must be revoked. Therefore, it can be concluded that the authority to conduct a political review of the GR lies with the DPR (Huda 2016). According to Saldi Isra, a constitutional law expert on presidential powers in issuing a GR, "Based on the provisions of Article 22 Paragraph (1) of the 1945 Constitution, it is stated that "*in cases of compelling urgency, the President has the right to issue government regulations in lieu of laws*". This provision is referred to as the "President's subjective constitutional right".

Regarding the extraordinary circumstances in issuing a GR, it can be said to be a situation/condition that is 'urgent and compelling'. The elements of urgency and necessity must exhibit two general characteristics, namely (1) the presence of a

crisis, and (2) the urgency of the situation. Urgency is defined as the occurrence of unforeseen circumstances that demand immediate action without prior deliberation.

Furthermore, the criteria for what is meant by the term 'urgent and compelling circumstances' can also be described as a situation that is difficult, important, and sometimes crucial in nature, which cannot be anticipated, estimated, or predicted in advance, and must be addressed immediately through the enactment of regulations equivalent to laws (Malik 2016). A state of emergency should not be prolonged, because the main function of emergency law (*staatsnoodrecht*) is to immediately eliminate the danger so that normalcy can be restored. If the state of emergency is prolonged, then the *nood* (danger) violates the purpose of emergency law. A state of emergency requiring extraordinary measures must be balanced to prevent excessive authority and the abuse of power. A state of emergency is an abnormal situation, and the law used to address it must also be considered abnormal and extraordinary, even under normal circumstances. While such actions by the authorities might be deemed unlawful under normal conditions, they are deemed lawful and justifiable due to the abnormal or emergency situation (Moza, Aryo, and Asri 2022).

In the formation of a GR, the current controversy is the degree of urgency that serves as the political and sociological basis for its formation. In fact, there is often a saying among the general public that a GR is not formed because of an urgent need, but rather because of a pressing interest. Urgent necessity can be categorised as an abnormal condition that requires extraordinary measures to immediately end the situation. Throughout Indonesia's history, there have been many abnormal events and conditions, whether in the political, legal, economic, social, natural disaster, or other fields. In such cases, existing positive legal instruments are often unable to serve as a solution (Mawuntu 2011).

There are several material requirements for enacting a GR. These requirements (Jimly Asshiddiqie 2007) are as follows:

1. There is an urgent need to act or reasonable necessity;
2. The time available is limited (limited time) or there is a time constraint;
3. There are no other alternatives or, according to reasonable reasoning (beyond reasonable doubt), other alternatives are not expected to resolve

the situation, so that the enactment of a GR is the only way to resolve the situation.

Affirmation of Articles 59 and 60 of the 2017 Law concerning the Prohibition of Mass Organisations

Considering that Law No. 17 of 2013 on Mass Organisations urgently needs to be amended because it does not comprehensively regulate organisations that are contrary to Pancasila and the 1945 Constitution of the Republic of Indonesia, resulting in a legal vacuum in terms of the application of effective sanctions, President Joko Widodo on 10 July 2017 signed the GR on Amendments to Law No. 17 of 2013 on Mass Organisations.

The GR stipulates that a mass organisation, here in after referred to as Mass Organization, is an organisation established and formed voluntarily by the community based on shared aspirations, desires, needs, interests, activities, and objectives to participate in development in order to achieve the goals of the Unitary State of the Republic of Indonesia (NKRI) based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

According to this GR, prohibited Mass Organizations are:

1. Mass Organizations that use names, symbols, flags, or attributes that are the same as the names, symbols, flags, or attributes of government institutions
2. Using, without permission, the name, emblem, or flag of another country or international institution/body as the name, emblem, or flag of the Mass Organizations; and/or using a name, emblem, flag, or symbol that is substantially or entirely similar to the name, emblem, flag, or symbol of another Mass Organizations or political party.
3. In addition, this Government Regulation in Lieu of Law stipulates that mass organisations are prohibited from committing acts of hostility against ethnic groups, religions, races or groups; committing abuse, blasphemy or desecration against religions practised in Indonesia
4. Engaging in acts of violence, disturbing public peace and order, or damaging public facilities and social facilities; and engaging in activities that are the responsibility and authority of law enforcement agencies in accordance with applicable laws and regulations.
5. Mass organisations are also prohibited from engaging in separatist activities that threaten the sovereignty of the Republic of Indonesia, and/or adopting,

developing, and spreading teachings or ideologies that are contrary to Pancasila.

6. 'Mass Organizations that violate the provisions referred to shall be subject to administrative sanctions and/or criminal sanctions,' states Article 60 of this GR. Administrative sanctions as referred to in this GR including written warning, suspension of activities, and/or revocation of the registration certificate or revocation of legal entity status. The written warning referred to herein, as explained in this GR, is issued only once within a period of seven working days from the date of issuance of the warning. If the Mass Organizations fail to comply with the written warning within the specified period, the Ministers (Minister of Home Affairs, ed.) and the minister responsible for government affairs in the field of law and human rights, within their respective authorities, on behalf of the Government, shall impose the sanction of suspension of activities.

Criminal provisions under the GR of Mass Organizations are as follows:

Any person who is a member and/or official of a Mass Organization who intentionally and directly or indirectly violates the provisions referred to in Article 59(3)(c) and (d) shall be subject to a short-term imprisonment of 6 (six) months to a maximum of 1 (one) year. Any person who is a member and/or official of a Mass Organization who intentionally and directly or indirectly violates the provisions referred to in Article 59(3)(a) and (b), and paragraph (4) shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years. In addition to the imprisonment referred to in paragraph (1), the person concerned shall be subject to additional penalties as provided for in criminal legislation.

A Brief Portrait of HTI (Hizbut Tahrir Indonesia)

The dynamics of global politics in its hegemonic pattern played by the West have given rise to demands from Indonesian Muslims for national politics to reflect religious moral values. Such demands have emerged as a major agenda for Indonesian Muslims, both those who are politicians in political parties and those who are members of Islamic groups affiliated with civil society.

This is what will be discussed in this section, particularly the phenomenon of the emergence of Islamic organisations or militias following the collapse of the New

Order regime, such as the emergence of Hizbut Tahrir Indonesia (HTI). This phenomenon is worth highlighting in this article because it has a unique way of expressing its Islamic political aspirations to the public and is reportedly one of the organisations that will be dissolved under the 2017 Law concerning Mass Organisations.

Perhaps the Islamic movement in Indonesia that is currently most focused on striving for the establishment of an Islamic caliphate in Indonesia and anywhere else in the world is Hizbut Tahrir. Hizbut Tahrir is a new Islamic movement in the national political landscape. This organisation views politics as its activity and Islam as its ideology. Politics is its activity, and Islam is its ideology. Hizbut Tahrir is a political group that, to this day, has not referred to itself as a political movement (party) in Indonesia. Hizbut Tahrir is a political organisation, not a spiritual organisation (such as a Sufi order), not an academic institution (such as a religious studies institute or research body), not an educational institution (academic), and not a social institution (operating in the field of social welfare). Islamic ideas form the core and essence of the group, and are also the key to its continued existence (Fealy 2020).

Since its establishment in 1953 in Al-Quds, Palestine, this organisation has had a grand vision, namely to uphold Islamic life and spread the message of Islam throughout the world. To uphold Islamic values in society, Hizbut Tahrir believes this must be achieved through a state, specifically an Islamic State or Caliphate led by a Caliph elected democratically by the people. This caliphate must be sworn in by Muslims to be heard and obeyed, so that it can govern based on the Quran and the Sunnah of the Prophet and spread the message of Islam throughout the world through *daʿwah* and *jihād*.

The birth of HT can indeed be said to have originated from the Muslim Brotherhood movement, a political organisation founded by Hasan al-Banna in Egypt in 1928. Hasan al-Banna's goal in founding the Muslim Brotherhood was to fight against colonialism, overcome the decline of Islamic civilisation, and bring the Muslim community back to the pure teachings of Islam (Wekke 2018). Unfortunately, Hasan al-Banna and his followers seemed to believe that the ideology and system of Mussolini's Italian fascism and Soviet communism were more useful in achieving their goals than liberalism, which upholds freedom for everyone in seeking truth and practising their religious teachings. Additionally, al-Banna was also exposed to Wahhabism ideology, and from the very beginning, the

mindset and totalitarian-centralist nature of fascism, communism, and Wahhabism were already embedded in the DNA of the Muslim Brotherhood.

Disappointed with the Muslim Brotherhood, Taqiyuddin al-Nabhani founded HT. HT was established in 1953 CE/1372 AH by Sheikh Taqiyuddin bin Ibrahim bin Mustafa bin Ismail bin Yusuf an-Nabhani, a judge at the Istiʾnaf (Supreme Court) in al-Quds, born in Ijzim, Haifa, Palestine, and an alumnus of Al-Azhar University and Dar al-Ulum, Cairo, at an appellate court in Jerusalem, in the Baitul Maqdis area, as well as a skilled politician. Taqiyudin an-Nabhani came from a 'family of scholars,' as both of his parents were legal scholars (*faqīh*). Additionally, his great-grandfather, Sheikh Yusuf bin Hasan bin Muhammad al-Nabhani al-Shafi'i, Abu Mahasin, was a scholar, poet, and one of the judges during the Caliphate era. His disappointment stemmed from his belief that Muslims at the time had been corrupted by the ideas and emotions of capitalism, socialism, nationalism, and sectarianism. Therefore, he aspired to establish an International Islamic Caliphate, beginning with Arab territories and then expanding to non-Arab Islamic territories.

HTI misidentifies the root of the problem, leading to incorrect conclusions and reasoning. For example:

> "The concept of the nation-state has become a deadly poison because it has caused disorientation of identity, as well as disintegration and division among Muslims. Due to the nationalist ideology embedded in the concept of the nation-state, Muslims have become disoriented in identifying themselves. For example, Muslims from various nations, such as Turkey and Arabia, who initially identified themselves as Muslims united by Islamic faith, eventually identified themselves as the Turkish nation and the Arab nation. This is the poison that has become the root cause of disintegration and division among Muslims." (Ummah 2019).

The infiltration of HTI's ideology and movement can be considered a threat to the future integrity of the Republic of Indonesia. This is because HTI considers Pancasila, the foundation of the Indonesian state, to be haram (forbidden) and must be replaced with the formalisation of Islamic law. They also openly state that Indonesia, which adheres to a democratic system, is a toghut (unbelieving) state and must be replaced with an Islamic Caliphate.

In the 1990s, HTI's missionary ideas spread to the community through door-to-door activities in mosques, offices, companies, and residential areas (Fajar Purwodadi n.d.). After HTI had spread throughout the country, it began to appear openly in 2002, namely at an event held in March 2002 at Istora Senayan Jakarta.

HTI held an International Conference on the Islamic Caliphate. The conference featured HTI figures from abroad, including Dr. Muhammad Ustman (Indonesia), Ustad Ismail al-Wah wah (Australia), Ustad Syarifudin M. Zaen (Malaysia), and KH. Muhammad al-Khaththath (Indonesia). The conference marked HTI as a political organisation with an Islamic ideology (Wekke 2018).

Not only that, but on 22 July 2011, a group of women affiliated with HTI, known as Muslimah Hizbut Tahrir Indonesia (MHTI), also held a demonstration attended by 200 Muslim teenage girls entitled 'Indonesian Children Demand Sharia and the Caliphate' in celebration of National Children's Day. During this protest, a long march was held from the City Walk Sami Luwes area to the Gladag Roundabout (Lubis and Jamuin 2015). The spread of their ideology has not escaped the attention of Indonesia's younger generation.

HTI's actions are becoming increasingly intense and have the potential to give rise to radical movements in Indonesia. For example, on 31 March 2013, HTI Solo Raya, together with Jama'ah Ansharut Tauhid (JAT), Laskar Umat Islam Surakarta (LUIS) and Front Pembela Islam (FPI), organised a long march demanding the dissolution of Densus 88 from Slamet Riyadi Street, Manahan, Kerten, Purwosari, ending at the Grand Mosque of Solo (Wekke 2018).

The massive movement carried out by HTI also succeeded in gaining recognition from the local government. This happened in the city of Bogor, where on 8 February 2016, the Mayor of Bogor, Arya Bima, inaugurated the office of DPD II HTI Kota Bogor (Kami 2017). Arya Bima's actions at the event have been criticised by the public, as Bima is seen as legitimising the existence of HTI, which is an organisation that opposes Pancasila.

Maṣlaḥah **as a Methodological Framework and Analysis**

The use of Uṣūl fiqh as a perspective in analysing laws in Indonesia is considered important. Historically, Uṣūl fiqh, as one of the disciplines that has long existed in Islamic civilisation, has made a significant contribution to the methodology of thinking in the field of Islamic law. In fact, uṣūl fiqh is not a discipline that existed or was taught by the Prophet specifically. The emergence of Uṣūl fiqh is attributed to the efforts of Imam al-Shafi'i's *al-Risālah*, with the aim of assisting in the understanding of both the Quran and hadith (Rachmat Syafe'i n.d.-a). *Uṣūl fiqh*

plays an important role in addressing contemporary issues despite having been separated from the text for a long time.

Given the significant contribution of usul fiqh to the body of Islamic legal thought, it is imperative that Uṣūl fiqh be sustained and preserved. The preservation of usul fiqh should be achieved by employing it as a methodology in seeking solutions to issues related to Islamic law. Uṣūl fiqh should be adopted as a method for *ijtihād* by scholars or experts in Islamic law. The reality of Islamic law today is different. The *ijtihād* process currently being carried out tends to return to fiqh rather than Uṣūl fiqh. This means that when a problem arises, Islamic legal experts prefer to seek solutions through the opinions of scholars, which are essentially products of fiqh.

Explanation of *Maṣlaḥah* in the Concept of *Maqāṣid al-Sharīah*

Among the methodological sources for the development of Islamic law, maṣlaḥah is one of the methodological tools that can be used as a guide in developing fiqh or Islamic law. The concept of *maṣlaḥah* was originally used as the basis for *fuqaha* to formulate the concept of *maqāṣid al-sharīah*, which would become the foundation for the establishment of Islamic law. Unlike the linguistic approach to Islamic legal sources, which focuses on deepening the linguistic rules to find a specific meaning from sacred texts, the *maqāṣid al-sharīah* approach focuses more on efforts to see the values of human welfare in every *taklîf* (obligation) revealed by Allah (Rusli n.d.). The concept of *maqāṣid al-sharīah* is defined as the intention, purpose, or principle behind the enactment of laws in Islam. Therefore, the main topics of discussion are *ḥikmah* and *ʿillat al- ḥukm* (Abdul Wahab Khalaf n.d.). This concept stems from the assumption that all obligations (*taklīf*) are created in order to realise human welfare in this world and the hereafter (Abu Ishaq al-Syathibi n.d.) and that all obligations (*taklīf*) borne by every human being cannot be separated from the aspect of benefit, either explicitly or implicitly.

In al-Syatibi's view, laws that do not have the objective of benefit will cause those laws to lose their social legitimacy among human society, and this is something that cannot happen to God's laws. In another view, Wael B. Hallaq argues that the concept of *maqāṣid al-sharīah* in al-Shatibi's thought aims to emphasise the relationship between the content of God's law and human appreciation of law (Hallaq 2001). Based on al-Shatibi's understanding of the verses of the Qur'an, he concluded that *maqāṣid al-sharīah* in the sense of maslahah can be found in all

aspects of law (Abu Ishaq al-Syathibi n.d.), this means that if there are legal issues whose dimensions of benefit are unclear, they can be analysed through *maqāṣid al-sharīah*, which can be seen from the spirit of sharia and the general objectives of the revelation of Islam. According to al-Syatibi, the essence or primary purpose of implementing the Sharia is to realise and preserve five fundamental elements: religion (*al-dīn*), life (*al-nafs*), lineage (*al-nasl*), intellect (*al-ʿaql*), and wealth (*al-māl*).

In the effort to realise and preserve these five fundamental elements, al-Shatibi divides the levels of *maqāṣid* or objectives of Sharia into *maqāṣid al-ḍarūriyyāt*, *maqāṣid al-ḥājiyyāt*, and *maqāṣid al-taḥsīniyyāt*. *Maqāṣid ad-ḍarūriyyāt* are intended to preserve the five elements of human life. If these are not present, it will cause damage or even the loss of life and livelihood, such as eating, drinking, praying, fasting, and other acts of worship (Abu Ishaq al-Syathibi n.d.).

There are two ways to preserve the five things mentioned above. First, from the perspective of existence (*min nāḥiyyat al-wujūd*), which involves preserving and maintaining things that can perpetuate their existence. Second, from the perspective of non-existence (*min nāḥiyyat al-ʿadam*), which involves preventing things that cause their non-existence. For example, preserving religion from the perspective of existence (*al-wujūd*) includes practices such as prayer and zakat; preserving religion from the perspective of non-existence (*al-ʿadam*) includes practices such as jihad and punishment for apostasy; preserving life from the perspective of existence (*al-wujūd*) includes actions like eating and drinking; preserving life from the perspective of non-existence (*al-ʿadam*) includes punishments like *qishash* and *diyat*; preserving the mind from the perspective of existence (*al-wujūd*) includes actions like eating and seeking knowledge; preserving the mind from the aspect of *al-ʿadam*, such as the hadd punishment for alcohol consumption; preserving lineage from the aspect of *al-wujūd*, such as marriage; preserving lineage from the aspect of *al-ʿadam*, such as the hadd punishment for adultery and slander; preserving wealth from the aspect of al-wujud, such as buying and selling and seeking sustenance; and preserving wealth from the aspect of *al-ʿadam*, such as usury and cutting off the hand of a thief.

Maqāṣid or *maṣlaḥah al-ḥājiyyāt* are things that should exist so that in carrying out God's commands, one can act freely and avoid difficulties. If these things do not exist, they will not cause harm or death, but they will cause hardship and constraint. For example, in matters of worship, there is the concept of *rukhsah*; congregational prayer and shortening prayers for travellers.

Maqāṣid or *maṣlaḥah taḥsīniyyāt* refers to something that should exist to align with the requirements of good moral conduct or custom. If this does not exist, it will not cause harm or loss, nor will it cause hardship in its implementation; however, it is deemed inappropriate and unworthy according to the standards of etiquette and propriety. Among the examples are purity, covering one's private parts, and the removal of impurities.

Application of *al-dharīʿah* Method in Reading *Maṣlaḥah*

In the methodological study of Islamic law, the author uses a methodology that can be applied to explore laws in the context of analysing the enactment of the Law on Mass Organisations. Therefore, the selection of the *al-dharīʿah* method as an applicable methodological framework needs to be explained and explored after explaining maslahah. *Al-dharīʿah* is a method of *ijtihād* based on *maslaḥah-mafsadah*. This method was popularised by the Shafi'i school of thought. In this context, *uṣūl fiqh* as a science and methodology for deriving legal rulings still leaves room for several approaches that utilise the concept of maslahat-mafsadat. The most dominant method that emphasises this concept is *maṣālih mursalah* and *maqashid al-sharīʿah*. Both methods use the *maslaḥah-mafsadah* priority scale as the main standard in determining the law.

However, the similarity in the concepts used by the three methods does not necessarily mean that their methodologies in resolving legal issues are the same. Each has its own characteristics. Nevertheless, there is a strong relationship among the three. The following is an explanation of the relationship between the three methods mentioned above:

1. *Al-dharīʿah* and *maṣālih mursalah* are based on the principle of *maṣlaḥah*. If *maṣālih mursalah* is used as an independent sharia evidence, then *al-dharīʿah* is a method of applying that mashlahat in practical fiqh.
2. *Maqāṣid* adheres to the principles of justice, consistency, and moderation in the formation of law. The concept involves seeking and creating mashlahat and eliminating mafsadat through the six preservations (*ḥifẓ*): religion (*dīn*), soul (*nafs*), intellect (*ʿaql*), progeny (*nasl*), property (*māl*), and ecological environment (*bīʾah*), balanced by *ḍarūriyyāt, ḥājiyyāt*, and *taḥsīniyyāt*. To achieve these objectives of Sharia, *al-dharīʿah* can be used as one of the methods.
3. The use of *al-dharīʿah* "*saddan*" and "*fatḥan*" in *istinbāṭ al-aḥkām*.

In the dictionary of *uṣūl al-fiqh*, it is stated that the term *al-dharīʿah* refers to matters that are not inherently prohibited, but are strongly suspected of leading to prohibited actions, or matters that are outwardly permissible, but are strongly suspected of leading to prohibited actions (Jaenal Aripin 2012). However, as with most legal theorist (*uṣūliyūn*), *al-dharīʿah* is viewed from the perspective of its integrity and is divided into two parts: *al-dharīʿah ʿāmmah* and *al-dharīʿah Khāṣṣah*.

Regarding the role of *al-dharīʿah* as a method, it can be understood that the results of the occurrence and/or implementation of *al-dharīʿah* can be categorised into four types:

1. *Al-dharīʿah al-mufḍiyah ilā mafsadah rājiḥah* (prepondent means to evil [We call it Q1]), in the sense that the intermediary status is an access to something permissible. However, after being used, it tends to lead to something prohibited by sharia, even though the intermediary status itself is not harmful. This form is prohibited according to some *ulamaʼ* but not according to others.
2. *Al-dharīʿah al-mufḍiyah ilā mafsadah ghālibah* (prevalent means to evil [Q2]), which is an intermediary that is essentially always used as a permissible means, not intended for harmful matters. However, in practice, the harm it causes is more dominant and its danger is higher than its use or benefit. We call it Q2.
3. *Al-dharīʿah al-mufḍiyah ilā mafsadah marjūḥah* (likely means to evil [Q3]), which is a means that is initially used for permissible matters, but occasionally—again, occasionally—it leads to matters that contain deviant dangers, while also causing dominant benefits. For all legal theorists, this access is not obligatory to close.
4. *Al-dharīʿah al-mufḍiyah ilā mafsadah yaqīniyyah* (definite means to evil [Q4]), which are intermediaries that are known to lead to harmful actions, as their very nature is harmful. Classical scholars agree that such means must be completely closed off and prevented (Jaenal Aripin 2012).

Understanding the above classification model, *al-dharīʿah* has two possible legal executions, either '*closed*' or '*open*'. Closed means that it cannot be implemented, whether it is prohibited (*ḥaram*), abhorent (*makrūh*), contrary to the better (*khilāf al-aūlā*), or permisibe (*jāiz*). Open means that it must be implemented, whether it is mandatory (*wājib,* recommended *(mandūb),* better (*afḍaliyyah*), or permisible.

According to Wahbah Zuhaili, the parameters of *al-dharīʿah* depend on the balance of benefits and harms. It is obligatory if it serves as a means to an obligatory act, such as wudhu as a means to prayer; haram if it serves as a means to a haram act, such as stealing to support one's family without being in a state of necessity; and mubah if it serves as a means to a mubah act, such as engaging in halal business to enjoy life (Wahbah Zuhaili n.d.).

The above statement is in line with the statement made by Imam Al-Syathibi that al-dharīʿah, whether actions or words, that lead to harm, destruction, or evil must be prevented. This is referred to as *sadd al-dharīʿah*. Conversely, *al-dharīʿah*—whether actions or words—that lead to *maṣlaḥah* (benefit) are permitted and are often referred to as *fatḥ al-dharīʿah* (Abu Ishaq al-Syathibi n.d.).

Such a pattern is a form of Allah's wisdom regarding the Sharia law that humans must follow. Islamic Sharia law does not only focus on closing the doors to what is forbidden, but also prioritises opening the doors to what is permitted. Generally, the law governing any intermediary depends on the law governing its ultimate purpose. If it serves as an intermediary for something noble, then it is noble; if for something ignoble, then it is ignoble (Izzuddin bin Abdussalam n.d.).

Maqāṣid al-sharīah **as an Analytical Tool for the Implementation of the 2017 Law concerning Mass Organisations**

Maṣlaḥah is one of the methodological tools that can be used as a guide in developing fiqh or Islamic law. The concept of maṣlaḥah was originally used as the basis for *fuqaha* to formulate the concept of *maqāṣid al-sharīah*, which would become the foundation for establishing Islamic law. Therefore, in applying the maqashid al-shari'ah, the theory of *maṣlaḥah* is needed as a methodological analysis of how the GR concerning Mass Organisations is in the context of Islamic law from the perspective of *uṣūl fiqh*, or conversely, whether the implementation of the law is a regulation that causes harm to the ummah.

Before analysing the *maṣlaḥah* and *mafsadah* of the 2017 Law concerning Mass Organisations, it is better to quote the contents of the GR that has been ratified into law. In the GR that has been ratified into law, it is emphasised that prohibited mass organisations are those that commit acts of hostility against ethnic groups, religions, races or groups; commit abuse, blasphemy, or defamation against religions practised in Indonesia; commit acts of violence, disturb public peace and order, or damage public facilities and social facilities; and engage in activities that

are the responsibility and authority of law enforcement agencies in accordance with the provisions of laws and regulations. Engaging in separatist activities that threaten the sovereignty of the Republic of Indonesia, and/or adhering to, developing, and spreading teachings or ideologies that contradict Pancasila. 'Mass organisations that violate the provisions referred to shall be subject to administrative and/or criminal sanctions.' The quoted article explains that mass organisations that engage in separatist activities that threaten the sovereignty of the Republic of Indonesia and adopt, develop, and spread ideologies that contradict Pancasila are not in accordance with God's command for the benefit that will be brought about.

Supporters of the caliphate idea often cite verses from the Qur'an and hadiths to establish the caliphate as part of religious dogma, with the aim of upholding the word of God that motivated preserving religion (*ḥifẓ al-dīn*), but this will actually result in harm. In the theory of *maqāṣid al-sharīah*, preserving religion is not always the highest priority in the hierarchical structure of primary principles that underlie sharia legislation (*ḍarūriyyāt khamsah*) according to al-Shatibi or *al-ḍarūriyyāt al-sittah* according to Ibn 'Ashur). Borrowing al-Raysuni's opinion, preserving religion is not always at the top of the hierarchy that must always be prioritised. 'Matters of urgency' necessitate the issuance of GR 2 of 2017 in the Indonesian context in accordance with the hadith *lā ḍarar wa lā ḍirar* (it is not permissible to do something that is harmful and dangerous). This is further elaborated to include matters that undermine the primary principles of religion (*al-kulliyyāt al-khams*).

Naji Mushthafa Badawi at the International Conference in Mecca (2012) stated that political practices or government policies must adhere to four main points: *first*, the basic rule for conducting political affairs is that it is permissible. *Second*, there is authority to implement any form of state system as long as it complies with the principles of Sharia, including justice, equality before the law, and upholding human rights values. *Third*, government policies depend on the welfare of the people. *Fourth*, political affairs (imamah) adhere to similar principles in muamalah ethics, including in the process of contract formation. If contracts in muamalah are permitted to be carried out through various mechanisms that are currently developing, so too are the mechanisms for exercising leadership, as long as they do not violate the principles of muamalah law. The issuance of GR 2/2017 in the case of Indonesia is an implementation of *siyāsah sharʿiyyah*, whose authority is held by the President as the holder of supreme leader political power (*wilāyat al-imāmah al-ʿuẓmā*). Al-Qarafi argues that, as long as it is based on the principle of

public interest, a decision issued by a head of state is at the highest level of the legal hierarchy, has binding legal force, and can override laws at lower levels of the hierarchy, such as judges (*qāḍī*) and religious scholars (*mufti*).

The perspectives of HTI and PKI directly intersect with sensitive issues in the context of nation-building and statehood, making them prone to sparking social conflicts among grassroots communities. Ibn Ashur argues that social unity (*ijtimāʿ al-ummah*) is a benefit that, according to the hierarchy of benefits theory, must at times take precedence over the pursuit of religious benefits *an sich* (1997, 16:291).

The application of *al-Dharīʿah* as a Methodological Theory in the Enactment of the 2017 Mass Organisation Law

The Use of *al-dharīʿah* "*saddan*" and "*fatḥan*" in *istinbāṭ al-aḥkām*. In the dictionary of *uṣūl fiqh*, it is stated that the term *al-dharīʿah* refers to matters that are not inherently prohibited, but are strongly suspected of leading to prohibited actions, or matters that are outwardly permissible, but are strongly suspected of leading to prohibited actions (Jaenal Aripin 2012). However, as with most legal theorists, *al-dharīʿah* is viewed from the perspective of its integrity and is divided into two parts: *al-dharīʿah ʿāmmah* and *al-dharīʿah khāṣṣah*.

Regarding the role of *al-dharīʿah* as a method for interpreting how the 2017 Law concerning Mass Organisations is implemented to achieve public welfare or, conversely, cause harm to the community, it can be understood that the outcomes of the occurrence and/or implementation of *al-dharīʿah* can be categorised into four types:

Table 1. Implementation of *dharīʿah* rules to the GR

Aspect of Implementation	2017 Law concerning Mass Organisations
Q1	In principle, forming an organisation or a group of people is permitted because it is guaranteed by Article 28(j) of the 1945 Constitution, which states that it is a fundamental human right to form associations, gather, and express opinions. However, if an organisation leads to division, the right to gather and join the organisation is revoked or prohibited.
Q2	Some banned organisations often present a different face from their original purpose and the reason for their establishment, but in their

	preaching, they use their means of preaching to plot and infiltrate their followers to not love the Indonesian state. Therefore, according to this theory, such organisations must be banned.
Q3	Preaching and politics do not violate Islamic law, but if preaching and politics threaten the integrity of the nation, then preaching and politics are automatically prohibited.
Q4	-

Source: primary data tabulated by author

This method is used to ensure that organisations believed to be engaging in acts of hostility against ethnic groups, religions, races or groups; committing abuse, blasphemy or desecration of religions practised in Indonesia; committing acts of violence, disturbing public peace and order, or damaging public and social facilities; and engaging in activities that are the duty of the state, carrying out separatist activities that threaten the sovereignty of the Republic of Indonesia, and/or adhering to, developing, and spreading teachings or ideologies that contradict Pancasila, then their existence must be prohibited by law.

Fiqh **rules as problem solving for the pros and cons of the enactment of the Law on Mass Organisations**

In determining the level of benefit in Islamic law, experts in usul al-fiqh often use the fiqh rule that states "*darʾul mafāsid muqaddamun ʿalā jalb al-maṣāliḥ*" meaning preventing things that cause harm and/or danger is more important than seeking the benefits to be gained (Al-Zarqa 2020).

The above statement is concise, succinct, and rich in meaning, implying that allowing organisations that threaten the integrity of the Unitary State of the Republic of Indonesia to exist may cause greater harm than granting permission for someone to establish an organisation that may be beneficial.

Concept of eliminating harmful effect (*al-ḍarar yuzāl*), which has the following logical analogy 'the danger of national disintegration and the danger of radicalism will threaten the lives of many people, and if that threat is proven, then many lives will be lost. The second rule in Islamic law '*When faced with two evils (forms of damage or danger), avoid the greater evil by violating or taking the lesser evil*' is also implemented at this stage. The above fiqh rules are the basis for society and the government as a legal foundation for determining the rules that can be

used in the process of protecting this country. If protection based on comfort is the right of all Indonesian people, then in order to protect this country from destruction by certain individuals, the state must be responsible for upholding these laws.

Conclusion

In this Government Regulation in Lieu of Law that has been enacted into law, it is emphasised that prohibited mass organisations are those that engage in acts of hostility towards ethnicity, religion, race, or group; commit abuse, defamation, or desecration of religions practised in Indonesia; commit acts of violence, disturb public peace and order, or damage public and social facilities; and engage in activities that are the responsibility and authority of law enforcement agencies in accordance with the provisions of laws and regulations. Engaging in separatist activities that threaten the sovereignty of the Republic of Indonesia, and/or adopting, developing, and spreading teachings or ideologies that contradict Pancasila are policies and regulations that are in accordance with Islamic law from the perspective of maqoshid syariah and the methodological framework of adzariah, namely *al-dharīʿah al-Mufdhiyah ila mafsadah yaqîniyyah* (definite means to evil), that is, means believed to lead to harmful actions, such as communism and radicalism, as their very nature is inherently harmful. Scholars agree that such forms must be strictly prohibited and prevented (Jaenal Aripin 2012).

Due to urgent circumstances that necessitated the issuance of GR No. 2 of 2017 in the Indonesian context in accordance with the provisions of the hadith *lâ dharara wa-lâ dhirara* (it is not permissible to do something that is harmful and dangerous). The explanation is expanded to include matters that cause damage to the primary principles of religion (*al-kulliyyât al-khams*), including religion (*ad-dîn*), life (*an-nafs*), lineage (*an-nasl*), intellect (*al-aql*), and wealth (*al-mâl*). Furthermore, the 2017 Law concerning Mass Organisations has a strong relevance to the theories in Uṣūl fiqh. The 2017 Law amending GR No. 2 of 2017 on mass organisations, through the provisions contained therein, has a methodological foundation based on the theories in Uṣūl fiqh. Several methodological theories are used in the articles, such as *mashlaḥah*, *sadd al-dzarîʾah*, *fatḥ al-dzarîʾah*, and the principles of fiqh that serve as the methodological foundation. The author analyses that the existence of the 2017 Law concerning Mass Organisations is a preventive measure to counter the dangers of radicalism and mass organisations that are anti-Pancasila. Therefore, in the study of Uṣūl fiqh, it is stated that maintaining the unity and integrity of the ummah takes precedence over protecting religion or *hifdzu din*.

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