

The Welfare State: Construction of the Caliphate System and the Indonesia Constitutional Citizen Health and Social Rights

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Abstract

The caliphate system is a system which is known to only acknowledge a government or a state leadership as legal if its governance uses the Islamic law as the absolute law, meanwhile other laws such as the positive law (the law which is applied in Indonesia) is deemed as a form of governance which is against Islam. Such understanding is clearly contradictory to the Indonesian Constitution (the 1945 Constitution). In the Indonesian Constitution, it has stated that the implementation of the government or the authority is based on the constitution supremacy. All forms of governance or application of authority (in the state) refer to the norms created by the state through the mandated organizations.

Keywords: *Constitution, caliphate, system, state, law.*

Introduction

The pro and contra on the caliphate system have often filled the field of public discourse. The group who claim to be pro to this system believe that the caliphate system is suitable to be applied in Indonesia, and should be used as the ideology. This group does not want Pancasila (the five principles which make the ideology of Indonesia) to be the ideology of the state, and they believe that the caliphate system is deemed to be more suitable.

Meanwhile, in Indonesia, there is another group who disagrees if the caliphate system becomes the ideology. The group of people sternly rejects the belief of Pancasila, which has already become the vision and the ideology of the nation, which is to become the welfare state. We can see the difference between the caliphate system and the Pancasila system regarding the welfare state, especially when discussing about health assurance.

There is a common concern which happens everywhere due to some active promotions on the

caliphate system. They believe that the governmental system which is applied in Indonesia is against Islam and that the government has failed in creating a social life which is peaceful, fair, and prosper. In this paper, the formulated problems are, in reality, how is the urgency of the welfare state and the fulfilment of the people's health rights in constitution? Then, in reality, how is the caliphate system and why is the constitution (the 1945 Constitution) more suitable than the caliphate system to be applied in Indonesia?

Research Method

This study used a juridical normative method with a qualitative descriptive approach.. Descriptive method is used to describe and explain the factual conditions of the research to find out the solution

Discussion

The Urgency of the Welfare State in Constitution as the Life of a Nation: In a political community which is organized correctly, the existence of a state is for the people; and this is known as the welfare state. The people who formulated the state cannot establish their own affairs without the highest arbitrary power¹. From this stately construction, many forms of roles are run by some institutions or some people to achieve or to reach the goal which is idealized by the state.

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There were some amendments of the 1945 Constitution in the form of quality and quantity². The many rights of the people which were beforehand non-existent in the constitution, are inserted in the amendment, including health rights which are crucial in a welfare state.

In essence, the main function of the Constitutional Court is to guard and to protect the constitution. It is a correction of the governmental experiences in the past which was caused by multiple interpretations of the Constitution³. Its function is so that the constitution may always become the “holy book” in the nation. The Constitutional Court’s ideal formation cannot be separated from the judicial review⁴.

The existence of the judicial review is to avoid the possibility for constitutional products to bring loss to the people’s interests⁵ or to destruct the constitutional rights of the people. Thus, constitution’s constitutionality must be tested as follows: *first*, the Constitution is a political product of two institutions, which are the president and the People’s Representative Assembly, who are chosen by the majority of the people based on the rule by majority principle, where there is no guarantee of its rightfulness and justice based on the 1945 Constitution. *Second*, the people’s wills are reflected in the 1945 Constitution, meanwhile the Constitution reflects the wills of the political elites in the parliament⁶. Karman stated that the constitution is the people’s law, thus it must contain stipulations of the welfare state, including health rights⁷.

If the constitution is violated, it will surely disturb the position of the state as a welfare state, which is fundamental. It has the potential to threaten the constitution and the people’s welfare⁸. This condition has the potential to hurt the ideals that the constitution is “a higher order law (which) will generally be entrenched,”⁹. This construction must be protected by all who are subjects of this nation.

The Construction of the Caliphate Welfare Paradigm: The Indonesia ideology system is Pancasila and the welfare state. As a governmental system, the caliphate system is created by human beings, where its contents vary from time to time and from one place to another. In Islam, there is no standard in the governmental nor stately systems. The Muslims of Indonesia are allowed to have a governmental system which is according to the needs and the reality of the Indonesians themselves¹⁰.

The Islamic scholars who participated in establishing and in developing Indonesia as welfare state stated that the state of Pancasila is a final choice and that it does not contradict with the Islamic sharia. Thus, it must be accepted as the noble agreement of the state¹¹. With all costs, Pancasila must be upheld as the ideology of the state. If seen from the philosophical aspect, all legal systems of Indonesia cannot be separated from the belief that Pancasila is the *Philosophische Grondslag (Grundnorm)*¹².

In the aspect of Indonesia’s life as a state, it can be implemented by adapting and harmonizing the values of Pancasila as the *philosophische grondslag (grundnorm)* and the 1945 Constitution as the *staatsfundamentalnorm*. Both of them are to be applied in the society, the state, and the nation for the people’s welfare. If this harmonization is applied well, the state won’t easily be broken by other strengths, including those who are consistently preaching the caliphate system as the most correct system.

Hasan states that human beings have the mandate of “*welfaresjip*”. The doctrines of the Quran state that humans are the only creatures who are given the mandate from God to manage and to use the natural resources and the welfare as “God’s caliph on earth”. It gives human beings the rights for exploration, exploitation, and also the usage of those resources in the efforts to fulfill their needs and to increase the quality of their lives. But humans must be responsible in using those rights¹³. This is based on God’s order, “It is He who has made you successors on the earth, and raised some of you in rank above others so that He may test you in respect to what He has given to you.” (The Holy Quran, al-An’am, 6: 165). The reference from the Qur’an above gives guidance to the humans to carry out their activities as “God’s caliph on earth” (*khalifah fil ardl*) beneficially, for example by developing a governance which is transparent and accountable, natural resource usage based on ecological protection, and also protecting the rights; including the health rights of all human beings who embrace variative religions. Every person has the right for prosperity and the right for health rights. This is because this country is a welfare state which embraces diversity and multiple cultures. Thus, all citizens constitutionally have the obligation to respect and to protect each other.

Ucok Unpad states that Indonesia is built based on the agreement of all parties. Its land is spread from Aceh to Merauke. Its foundation is made from five principles

which are explored from the history of the nation. Meanwhile, it is formed by bricks which are made of the various ethnicities, tribes, cultures, and religions with all of their pluralities, which are layered by the cement of mutual desire and mutual feelings due to colonialism, to live together as a nation. This means that it is not right to say that Indonesia is only owned by a group of people. Indonesia is one for all and all for one¹⁴.

As a comparison, Prophet Muhammad (peace be upon him)'s manner in developing the people or the "state" (the government) is based on the people's welfare. He acknowledges and upholds diversity. He does not state that the caliphate system is to develop the people. In many aspects which regard the society and the state, Prophet Muhammad was very democratic in delegating members of the society who have particular expertise, like what he stated, "You have better knowledge of the affairs of your world." (Sahih Muslim 2363). His statement shows there are many potentials and specialness in every human being with all of their diversity in culture, religion, politics, health, education, etc.,

Mahfud also suggested a similar opinion. He states that there is no standard system in the primary sources of Islam. Everything is up to the people according to the condition of the society and the development of the era. The proof is that there are different governmental systems in the Islamic world. There are those which use the kingdom system, the emirate system, the sultanate system, the republic system, etc.¹¹. This shows that there is not one system which is deemed as correct in the construction of Islam's governmental system, as all nations have the right to apply the systems which are acknowledged based on their *ijtihad* as the system which is most suitable and most beneficial for the people and the nation.

The Indonesian constitution and its Pancasila may give the best towards the welfare and health rights in the life as a nation compared to the caliphate system. Wahid¹⁵, Indonesia's former president, stated that the acknowledgment and the acceptance of Pancasila as the principle of the government is carried out through religious means. This means that it positions religion and Pancasila in their own places, without contradicting one and another.

Pancasila is the ideologic-constitutional basis. Then, the Islamic *aqidah* (the Islamic articles of faith)

according to the *Ahlussunnah wal-Jama'ah* paradigm is the basis of faith. They cannot be contradicted between one and another. This is because in essence, someone who has the principle of Pancasila, has the belief on the Almighty God (in this case bringing one of the basic principles in Indonesia).

Mahfud explained that these systems are different from the system of a Pancasila state, which already has a standard until its institutionalism. It is a product of *ijtihad* which is developed based on the reality of the plural Indonesian people. It is identical to when Prophet Mohammed built the State of Madinah. It is dangerous if the supporters of the caliphate system often state that the Pancasila system of governance has failed in developing justice and prosperity¹¹.

The supporters of the caliphate system or paradigm do not understand that the Prophet's successful standard in developing Madinah was not because he applied the caliphate system. Yet, this is because the Prophet was able to protect and to apply justice to all groups or tribes. This is similar to the condition in Indonesia. If this country is not yet in welfare, nor has it established a strong and a clean government, it is not because of the constitutional system or the Pancasila ideology. But it is caused by the factor of leadership and bureaucracy. At this time, it is difficult to form a social condition or a governmental construction like in the Prophet's era.

In Madinah, the Prophet took strategic steps from the social, political, and cultural aspects. He unified the groups of people and the tribes in Madinah and those surrounding it, even though they had different traditions and embraced different religions. The diverse people and the various tribes were invited to make a type of "political contract" to live together, to respect and to help each other, to guard Madinah from all kinds of external threats, and to work together in a peaceful and a respectful manner. This is proven from the guarantee that they still have the freedom to run specific religions and to worship according to their religions. The political contract was signed by the tribes of Aun, Haris (Khazraj), Sa'idah, Jusyam, Najjar, Amru, Nabit, Aus, Tsa'labah (Jewish), Syathbiyah (Jewish), Jufnah (Jewish), etc.¹³ They agreed to develop the state based on the pluralistic people which is not based by the caliphate system. Yet, it is based on a political agreement to emphasize universal interests, not according the interests of a particular person or a particular group.

The construction of the state of Madinah becomes a great lesson in the field of the governance system. It teaches us that a system cannot be separated from the reality of the people's social life. The people's condition of plurality or diversity has great influence on the system's construction. The caliphate system cannot answer the needs of the Indonesian people. Only a little may be fulfilled by the caliphate system. The caliphate system may also bring a disaster to the Republic of Indonesia, as it may divide the state's construction of unity¹¹.

If these constitutional norms are obeyed by all citizens, thus the construction of Indonesia's dignity may be parallel to the "state of Madinah", as formed by Prophet Muhammad. This is because complying with the constitutional norms means running the basic religious, humane, social, and national norms responsibly.¹⁴

In a story, Caliph Umar reminded the Priest on the meaning of pluralism and the freedom in religion or the inclusive-humanistic relations with God, when the Caliph rejected the Priest's offer for the Muslims to pray in the church. His reason was that he was afraid that there will be some people who will act radically and try to destroy the worshipping place of people from other religions in the future, if he was to pray there.

For Caliph Umar, a place of worship is a sacred reflection which is principle for a religious community. Thus, when the Priest offered him to pray in the church, the caliph did not only think about the religion that he embraced. Yet, he also showed a political-religious behavior which is wise, clear, democratic, and prospective-humanistic, that must be enforced by all religion-embracers in the future.

Conclusion

In the construction of the constitution (the 1945 Constitution), it is clear that the constitutional right to embrace a religion or to believe upon certain paradigms which are thought to be correct is guaranteed. Even so, it does not mean that every system which is against Pancasila may be freely spread and developed. The Indonesian constitution also stated clearly on the welfare state and other rights including the health rights for the people.

In Indonesia, the caliphate system is an unconstitutional system. Such caliphate system is clearly not in line with the constitution of the Indonesians. It

is true that the majority of the Indonesian people are Muslims. But they have agreed that the governmental or the state leadership is implemented based on the constitutional supremacy, instead of the caliphate paradigm or system. All kinds of power establishment and governance (in the stately life) is based on the constitution as its "holy book".

The most important aspect of a stately system is how it gives benefits to the people. It is about how the rights of the citizens, including the health rights, justice, and equality rights are formulated and granted to the citizens. In the Indonesian constitution, the welfare state formulation has been stipulated sufficiently for the sake of the Indonesian people.

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