

Interpretation of *Taqnîn al-Ahkâm* by Ibn Al-Muqaffa' and Its Relevance to the Application of Islamic Law in Indonesia

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Abstract. This study aims to elaborate on Ibn al-Muqaffa's idea about *taqnîn al-ahkâm* using the literature review method. Many relevant pieces of primary and secondary literature were analysed using critical analysis techniques. Ibn al-Muqaffa', who lived during the Abbasid Dynasty, precisely in the time of Abû Ja'far al-Manshûr, had sparked the idea of the legislation of Islamic law (*taqnîn al-ahkâm*) to be applied throughout the Islamic territory to avoid diverse legal rulings among judges on the same legal case. Re-expressing the idea of Ibn al-Muqaffa' is important because it has relevance to the ideological ideals of most Indonesian Muslims so that national law absorbs as much as possible from Islamic law. These ideological ideals have grown louder and louder since the freedom of speech in Indonesia has become wide open. As a result, anyone now can express his/her ideological opinions and ideals without any fear of the threat of subversion. In a climate of democracy and freedom, the idea has been resounded again by many groups, including the general public, socio-political activists, academics and parliamentary members.

Keywords and phrases: *taqnîn al-ahkâm*, juridical positivism, *Risâlah al-Shahâbah*, Indonesian legal system, *siyâsah al-shar'iyah*

Introduction

Constitutionalism is the understanding or belief that a state must be carried out with legal rules, not based on the individual's will (Hailbronner 2017). These legal rules mainly concern the regulation of relations between people and government,

relations between state institutions, relations between central and regional governments and relations between one country and another (Brown 2017). Constitutionalism, the general framework of a country, will then have implications for regulating the content of the constitution, namely, more specific legal rules. On the one hand, the content of the constitution is very important for a society that already has its law (Gutmann and Voigt 2015). On the other hand, however, people always deal with new dynamics that will always challenge the content of existing statutes. This struggle is often found in constitutional politics in Muslim countries because some Muslims believe that Islamic sharia also includes the constitution. Meanwhile, some other Muslims believe that it is not enough for a country's constitution to only contain norms that have become a long tradition of Muslims (Wanandi 2002). It must contain relatively new rules, which reflect the new political values of Muslims in harmony with their social dynamics, democracy, human rights, religious freedom and equality before the law. The aspirations of the latter Muslims lay the foundation for modern constitutionalism (Rohmah et al. 2022).

This new interpretation of sharia in the spirit of modern constitutionalism emerged in the Muslim community along with the dynamics of an increasingly intelligent and enlightened Muslim development (Choudhury 2020). Islamic sharia is "normative", not "historical" and not necessarily in conflict with modern constitutions or democracy because in the discourse of modern constitutions, society must not forget the purpose of the constitution, namely, to benefit as many people as possible. Therefore, it is very important to examine and compare the performance of a constitution formulated based on Islamic sharia against the performance of a constitution established based on democracy.

Claims that Islamic sharia is not in conflict with democracy, pluralism and human rights are often made by Muslim activists who fight for the revival of the "Jakarta Charter" and the Muslim community fighting for the enforcement of the Islamic sharia (*tathbîq al-ahkâm*) for Muslims in Indonesia (Syukri 2023). This indicates that some Muslims in Indonesia are still striving for the enforcement of Islamic sharia in a comprehensive (*kâffah*) manner. In fact, upholding Islamic sharia comprehensively, or *kâffah*, requires complicated and tough legislation of Islamic law (*taqnîn al-ahkâm*), which in Islamic history has always experienced a deadlock (Syarif 2014). In the history of Islam, *taqnîn al-ahkâm* was only successfully implemented in the Ottoman government, known as *Majallat al-Ahkam al-Adliyah* (The Ottoman Courts Manual) and in India with the codification of the law, known as *al-Fatâwa al-Amgiriyyah* (The Amgiri Fatwas, which is a compilation of legal

opinions). As for the early days of the Abbasid reign, *taqnîn al-ahkâm* was only on the level of ideas, in which case Ibn al-Muqaffa' proposed that legal unification be conducted to avoid differences in legal decisions on the same problem.

The idea of the formal codification or legislation (*taqnîn*), according to Abû Zahrah, is not new in the Islamic world (Zahrah 1977). The idea of *taqnîn* has been known since the early days of Islam (al Qasim 1977). The codification of the Quran and the uniforming of the codified Quran in the time of the third khalifah, Uthman ibn Affân, are the earliest examples of *taqnîn* after the death of the Prophet Muhammad (PBUH). Looking further back, the Medina Charter (*Dustûr al-Madīnah*) established by the Prophet Muhammad (PBUH) and his companions is considered to be a form of legislation (*taqnîn al-ahkâm*) because it essentially used the constitution language as recognised in modern times. Many Islamic political experts assume that the Medina Charter was the constitution of the first Islamic state established by the Prophet Muhammad (PBUH) for the plural society in Medina (Sjadzali 1990).

During the Abbasid Dynasty, precisely during the Khalifah Abû Ja'far al-Manshûr, Ibn al-Muqaffa' re-sparked the idea of *taqnîn*, especially when he witnessed legal gaps and differences in court rulings for the same cases. His popular letter outlined the idea termed *risâlah al-shahâbah*. This letter was later published in a book titled *Risâlah al-Shahâbah*. In addition to using the same title, Ibn al-Muqaffa's work, *Risâlah al-Shahâbah*, was also published under a different title, namely, *Mas'ûl Bulagh*, which was edited by Ibn Thaufur (Azizy 2004). This research seeks to elaborate on Ibn al-Muqaffa's ideas about the legislation of Islamic law (*taqnîn al-ahkâm*) and its relevance to the Indonesian case, where certain Islamic groups, such as Hizbut Tahrir Indonesia (HTI), are known to be strict and insist that the Islamic sharia be enforced officially in Indonesia (Muhtadi 2009).

Many relevant pieces of primary and secondary literature were critically analysed. The primary literature analysed was *Risâlah al-Shahâbah* by Ibn al-Muqaffa' (1998), which consists of two versions. The first version is *Risâlah al-Shahâbah*, edited by Fahmy Sa'id and Tonnie Francis, published in 1998 by Dar al-'Alam al-Kutub in Riyadh, while the second version was edited by Muhammad Kard Ali and published by Dar al-Muqtabas in Damsyiq, Syria (al-Muqaffâ 2014). The other primary literature used was the book *Risâlah al-Shahâbah li Ibn al-Muqaffa* by Ali Husni Al-Kharbuthaly (2017), published by Al-Basil publishing house in Cairo. Secondary literature consisted of several recent research reports from 2010 to 2023 which were published in various scientific journals.

Theory of *Taqnîn*

The word *taqnîn* is etymologically a derivative of the word *qanûn*, which means “a set of rules or laws” (Amin 1974). This word, according to language experts, comes from the Persian language, but there are also other opinions that the word *qanûn* is derived from the Greek language, which entered the Arabic language through the Syriac language, meaning originally “a measuring device” and then “a rule”. In Arabic, the verb *qanana* means “to make law” (to make law, to legislate), while *qanûn* can mean law (law), regulation (rule, regulation) and statute (code). Several terms are synonymous with *qanûn*, namely, (1) law, (2) *qâ'idah* (method) (plural: *qawâ'id*), (3) *dustûr* (constitution), (4) *dhâbithah* (standard) (plural: *dhawâbith*) and (5) racism, pseudo plural. Imam al-Mawardi (d. AH 450/AD 1058) in his monumental book, *al-Ahkâm al-Sulthâniyah*, which is usually translated as “Constitutional Law in Islam”, has used the term *qanûn* on several occasions, which have connotations or specifications that are not always the same, such as *qawânin al-siyâsah* (legal provisions in the political sphere or public law), *hifzh al-qawânin al-shar'iyyah wa harasât al-ahkâm al-diniyyah* (maintaining public law based on *sharia* and maintaining religious law) and *al-qawânin al-muqarrarah* (laws) (al-Mâwardi 1419).

With the use of the term *qanûn* by al-Muqaffa' and al-Mawardi as mentioned earlier, it is recognised that the term *qanûn* only began to be used during modernisation (*tanzimat*) in Turkey in the presence of *al-Majallah al-Ahkam al-Adliyyah*, where the literal meaning of the Book of Justice (The Books of Rules of Justice) is incorrect. However, the increasing popularity of the term *qanûn* since the Ottoman era is undeniable. The codification of law in Turkey was the earliest example of Islamic law in the form of statutes, a modern law model of the Roman law system, which had the force of compulsion as statutes in general. At this point, *qanûn* was generally used in laws relevant to society (*mu'âmalah bayn al-nâs*) rather than matters of ritual worship (*mahdhah*), especially untagging or public law. Besides the law or regulations/laws, *qanûn* is also used to represent land tax records' registration and register (Azizy 2004).

In its use, Mahmassani mentioned that *qanûn* has three meanings: first, a collection of regulations or laws (a law book), such as the Ottoman Criminal Qanûn (Ottoman Criminal Code) and the Lebanese Civil Qanûn (Lebanese Civil Code); second, the law, which also refers to jurisprudence, where Islamic *qanûn* is the same as Islamic law; and third, statute. The difference between the third understanding and the first is that the first is more general and includes many things, while the third concerns only certain problems, where the Qanûn of Marriage is the same as the

Marriage Law, the National Education System Qanûn is the same as the National Education System Law and the Liquor Ban Qanûn is the same as the Liquor Ban Law. *Qanûn*, in this sense, usually relates to *mu'âmalah* (day-to-day transactions and interactions), as opposed to worship and has a strong legal force that is carried out by the state. Here is its difference from Islamic law in general, which usually includes both *mu'âmalah* and *'ibâdah* (acts of worship) (Adamson 2019). *Qanûn* in the third sense of its meaning has permanent power in its implementation the same way as the law passed by the government and the parliament when it is issued as a judge's decision in the court. The state provides the necessary tool to enforce the ruling so that it can be carried out.

In its development, the term *qanûn* can be interpreted as the official law applied nationally in an Islamic country whose majority of the population is Muslim (Berlian et al. 2023). Its coverage includes provisions relating to social interaction and profane matters as well as, very rarely, matters relating to *ibadah mahdhah* (specific acts of worship). It contains Islamic law, which has clear basic provisions in writing. These provisions relate to public policy based on the use of *'urf* (customary practices), *istihsân* (juridical discretion) and *mashlahah* (public interest). At first, *qanûn* was intended to regulate matters that had not yet been stipulated in the sharia, but subsequent developments focused more on *istihsân* and *mashlahah*, which were also based on *'urf*. Thus, *qanûn* Islamised provisions that had no roots in Islam itself as they arose from a culture deeply entrenched in a society on the condition that they did not contradict the sharia. Here there is a high likelihood that outside law systems, such as the Roman Law and Common Law systems, may have an influence. All three senses of *qanûn* agree on one point; that is, it refers to choosing one of the many opinions (*ikhtilâf*) of Islamic jurists (*mujtahidîn/fuqâha*) to then be obeyed by the whole community, especially when the *qanûn* chosen is a product of the legislative body. In other words, it has consensus value or *ijmâ'* although it is considered limited to certain countries. The four official laws are the product of the legislative, executive, or a combination of the two institutions. In history, it was not always the product of the legislature; sometimes, it was issued by a king or a ruler with high authority. Thus, *qanûn* has a binding power (*ilzâm*) and upon its decision, a state tool is there to execute it (Azizy 2004). From these four meanings, it can be concluded that *qanûn* means the law claimed to contain Islamic law both in whole or in part and still uses procedures to find Islamic law, such as *istihsân*, *mashlahah* and *'urf*. The legal provisions contained in it are of Islamic value and have the power supported by the state. In practice, it is not uncommon for the nuances of *siyâsah syar'iyah* (Islamic political ethics or governance) to be very prominent, inseparable from the political interests of the rulers of their time.

Based on the explanation above, *taqnîn* has two meanings. The first is *taqnîn* in general, which means the stipulation of a set of regulations or laws by a ruler who has a forceful power to regulate fellow human relations in a society. Second, *taqnîn* in specific, means the determination of the rules of a set of regulations or laws by the authorities who have the power to regulate certain problems, such as civil, criminal, or other problems.

The benefits that can be obtained from *taqnîn al-ahkâm* are as follows. First, a judge does not need to bother to look for the legal provisions of the issues submitted to him in various *fiqh* (Islamic jurisprudence) books. By contrast, he can immediately refer to the laws that are directly available to him so that the case resolution process can run faster and more smoothly according to the wishes of justice seekers. Second, the same problem of the same background may be decided by different laws as each judge must refer to the same law and declare a nationally applicable ruling. The three existing laws can be more authoritative and can be applied more effectively because they can be enforced by the government, without exception to the community.

In addition to having advantages, *taqnîn al-ahkâm* also has many weaknesses. First, the law is in a position that is highly dependent on government policy. New Islamic law can apply in a society if the government has enacted it. Without the government's involvement, practically Islamic law cannot be applied. Before *taqnîn*, on the other hand, Islamic law can apply, even without government legislation. Second, there will be a reduction in the understanding and perception of Muslims regarding something called law. Something new is considered legal if it has been promulgated. In other words, they might think that only the Islamic laws contained in a statute are seen as law, while anything outside, like laws on *tahârah*, offering greetings, zakat, fasting in the month of Ramadan or others that can actually be formatted in the form of a statute cannot be seen as law. This may leave a detrimental effect because what is meant by Islamic law is broader than just it is understood by people who live with the tradition of *taqnîn al-ahkâm*.

The idea of *taqnîn al-ahkâm* by Ibn al-Muqaffa'

Ibn Muqaffa', whose real name is Rawazbih ibn Dadzwih, was born in Jur (now Firuzabad), Iran, in AH 102/AD 720. Both his parents came from Persia. His family is included in the category of an affluent family. His parents are adherents of the religion of Zoroaster or Majusi. Ibn al-Muqaffa's parents are adherents of the Majusi religion who were obedient before converting to Islam. Before converting to Islam, Ibn al-Muqaffa' had the title of *Abû Amr* (father of Amr). He received an adequate education and mastered the Persian language and culture well. At

the age of 15, he moved to Basrah to continue his study of Arabic literature from prominent writers and Bedouins who came to the city from the interior. After becoming proficient in Arabic, he then appeared as the first person to translate literary works about Indian and Persian culture into Arabic. In addition, he was also noted as the first person to give birth to Arabic prose works.

Ibn al-Muqaffa's father, the Dazwah, who was titled *al-Mubarak* (the Blessed), won the trust of the al-Hajâj ibn Yûsuf government to collect taxes in Iraq and Iran. However, he was sentenced to cut his hands because he misused the tax proceeds. Since then, his last name received an additional *al-Muqaffa* which means "the person whose hand was cut off", then this title was passed down to his son, Abû Muhammad ibn al-Muqaffa'. Ibn al-Muqaffa' spent most of his age during the Umayyad Dynasty and only 10 years were spent during the Abbasid Dynasty (al-Kharbuthaly 2017). With expertise in two languages, Persian and Arabic, it was not difficult for Ibn al-Muqaffa' to obtain a position as a clerk during the Muawiyah era, which was at the end of its collapse. Thus, he witnessed firsthand the bloody chaos and conflicts that occurred during the transfer of power from the Umayyads to the Abbasids.

During the Abbasid Dynasty, Ibn al-Muqaffa' assumed the position of Secretary of the Abbasids in Kirman. By Khalifah al-Manshûr, he was asked to help three khalifah uncles, namely Sulayman ibn 'Ali, Ismail ibn 'Ali and Isân ibn 'Ali. In the hands of the latter Khalifah al-Manshûr, he converted to Islam and changed his name from Rawazbih to 'Abd Allâh and was given the title Abû Muhammad ibn al-Muqaffa' (al-Kharbuthaly, 2017). Right at the end of AH 138/AD 765, Ibn Muqaffa' was tragically executed by being chopped off one by one and then thrown into the furnace. Some people believe that the tragic execution of Ibn al-Muqaffa' happened because he was seen as a link, a term popular among the people at that time, which meant people who embraced heresy, atheism and endangered Islam. At the time of the Khalifah al-Hadi, he was accused of not recognising the Quran. In contrast to the opinions of the above community, Ahmad Amin (1993) seems more inclined to the opinion that the death sentence is more motivated by political factors and personal sentiment than religious belief factors.

The conditions of applying the law in the time of Ibn al-Muqaffa' were so alarming that even Ibn Muqaffa' himself considered the application of the law during his lifetime was in such a chaotic condition, mainly due to differences in decisions among judges for the same cases. One of the factors causing the chaos was that, at that time, the existing court did not yet have a law that could be used as a guideline for judges to receive, examine and decide on cases submitted to them. Each judge decides the case submitted based on the results of each judge's *ijtihad*, resulting in

decisions that are different and contradictory to each other, depending on which court, who the judge is handling the case and what school is used as a reference in making decisions, although still within the scope of the judicial area and in the same matter. At that time, it was seen that the scholars and judges had begun to compartmentalise their legal thinking by the school and educational environment that influenced them so that in deciding legal matters, they could not escape from the school they professed. For example, the case of murder and desecration of honour as something lawful done in Hirrah, while in the Kuffah region, both cases are forbidden and can be severely punished (al-Qâsim 1997).

The idea of reform offered by Ibn al-Muqaffa' was stated in his letter, which was given the name *Risâlah al-Shahâbah* or a letter for "companion of the khalifah". The term *al-Shahâbah* in the letter does not refer to the commonly used meaning that is "a companion of the Prophet", but the term means *shahâbat al-wullât* (companion leader) or *shahâbat al-khulafa* (khalifah's companion), or in the context of Indonesian constitutional law, called the Minister of State Secretary (Aulia and Effida 2018). The term "best friend" for the last two meanings, according to Ahmad Amin (1993), is commonly used at that time. This seems to be the argument underlying why Ibn al-Muqaffa' named his letter *Risâlah al-Shahâbah*. Even though the latter term was translated as "a letter for a companion or a khalifah's assistant", the core target of the letter was not only criticism and suggestions to the aides of the khalifah but also aimed at the khalifah who was in power at that time, namely the Khalifah Abû Ja'far al-Manshûr (al-Qâsim 1997).

Ris'lah al-Shahâbah: Criticisms and reform agendas by Ibn al-Muqaffa'

There are four reform agendas suggested by Ibnu al-Muqaffa', namely the military sector, the field of justice, officer recruitment and the land tax sector. Ibnu al-Muqaffa' also advised the khalifah that the behaviour and actions of the khalifah should be a good example (*uswah hasanah*) to become a figure and idol of the community because usually, a society will be good when they are guided by a leader who behaves well (al-Muqqaffa 1998). Officials under the khalifah, such as ministers, governors and other officials, will be enthusiastic, respectful and have good morals if led by people of noble character, but on the contrary, if the government leadership is weak. Therefore, Ibnu al-Muqaffa' is optimistic that if the leadership of the ummah consists of people who are experts in their respective fields and have good morals and religion, the community will also follow by example and will certainly help the government because the people will follow the steps and traces of their leaders. Of the four-reform agenda initiated by Ibn

al-Muqaffa in *Risâlah al-Shahâbah*, the idea of *taqnîn* is discussed further only in the following description (Amin 1993). The materials of *Risâlah al-Shahâbah* were broadly criticisms and reform agendas by Ibn al-Muqaffa'. The suggestions in the four areas referred to by Ibn al-Muqaffa' are discussed in the following section.

Military sector

There are five reform agendas proposed by Ibn al-Muqaffa' for this sector. First, a special law on soldiering should be made; in which various provisions regarding what may and should not be done by soldiers. Without such guidelines, Ibn al-Muqaffa' emphasised that they would not be able to discern the indications of what actions are permissible or prohibited. In this regard, he sharply criticised the behaviour of the warriors in showing their excessive loyalty to the khalifah so far, to the extent that "if the khalifah instructs him to pray with his back to the Qibla, he must hear and obey him with all his heart" (al-Muqaffa 1998). Yet this statement, according to Ibn al-Muqaffa', contradicts the words of the Prophet Muhammad, "There is no obligation for someone to obey a leader in matters that contain immoral elements to God" (Amin 1993). Therefore, one of the efforts to avoid obeying something contrary to Allah SWT's provisions is to make laws or *qanûn* that govern the actions of the warriors (al-Muqaffa 1998) so that they avoid arbitrary acts and excessive loyalty to the khalifah.

Second, there must be a separation of military administration and financial administration. Ibn al-Muqaffa' suggested this idea to the khalifah because, at that time, the military leaders who were appointed and given authority in certain areas in the regions often acted arrogantly and carried out arbitrary actions against the people; they even carried out violence and intimidation towards the people. Furthermore, the sanctions imposed by the khalifah on the actions of the commander who deviated and abused his authority were often never ignored, bearing in mind he felt strongly supported by the army and adequate funds, even without the support of the central government and more than that, he can take actions to defect the khalifah which implies the emergence of various things that can harm and undermine the authority of the central government.

Third, the military commander should be appointed from a high-ranking professional officer with high integrity, capability, acceptance and competence in carrying out his duties. In the military tradition, the warrior must submit to the

command of his commander by the warrior's oath (al-Muqaffa 1998) so it would be better if the soldier were led by a proven, highly skilled commander.

Fourth, the soldiers should be equipped with a variety of knowledge and strong martial skills, in addition to military science, such as reading, writing and understanding adequate religious teachings, so that they can maintain the *akhlâq al-karîmah* (noble ethics), *amânah* (trustworthiness), *'iffah* (chastity) and *tawâdhu* (humility).

Fifth, soldiers should be given an adequate salary or honorarium, on time, so that they are enthusiastic, assertive and professional in carrying out their duties which will get the soldiers to immediately provide aid and support at the right time before undesirable things arise (al-Muqaffa 1998). If the army neglects the well-being of its personnel, it may result in social vulnerability and security disruptions. This can lead to conflicts between security forces, disputes over land acquisition for business purposes, disagreements with the community, and criminal activities that bring shame to the army corps and their families (Amin 1993).

The field of justice

Ibn al-Muqaffa' proposed to the khalifah that he immediately draft an official law (*qanûn*) and enforced it nationally. In accepting, examining and deciding on a law case submitted to him, a judge must refer to the *qanûn* and may not stipulate laws that contradict the provisions contained in the *qanûn* (al-Muqaffa 1998). The *qanûn* made is not sacred, but it must be dynamic, following the times and in accordance with the problems and challenges faced, meaning that the government has the authority to amend the *qanûn* by changing times and social demands that continue to run dynamically. Al-Muqaffa's suggestion was submitted to the khalifah with consideration that the court at that time, as mentioned earlier, did not have an official *qanûn* enforced nationally and could be used as a reference by the judges in handling cases submitted to him. As a solution, the judges decide the cases submitted to them by their respective *ijtihad*, resulting in the same problems having varied legal decisions depending on who the judge is and what school the judge follows (al-Jabiri 1995).

Officer recruitment field

Ibn al-Muqaffa' proposed to the government to carefully select candidates for assistants in carrying out the wheels of government, such as ministers, khalifah secretaries and officials at the level of one, two, three and above so that the elected

officials were correct – fair, wise, honest, not corrupt, trustworthy, accountable and protect the community (al-Muqaffa 1998). Suggestions for fulfilling the listed criteria are intended so that the aides of the khalifah will later be able to carry out their duties properly in serving the community so that they are supported and loved by the people. Ibn al-Muqaffa' did not want the history to be repeated when there were khalifah's aides who were not loved and did not get full support from the people due to their commendable moral qualities and tendency to act arbitrarily towards the people, including the acts of violence and forced collection of money (Amin 1993).

Land tax sector (kharâj)

Ibn al-Muqaffa' proposed to the khalifah to immediately regulate the administration of land and the taxation system so that the land owned by the people was demarcated, registered in the deed and certificate of land, and transparent payment of taxes (Amin 1993). Thus, in addition to knowing the extent and boundaries of the land clearing, the people as landowners are protected from fraud by tax collectors regarding the amount of price to be paid. Next, he proposed that the land tax collector must be selected before being appointed as a tax officer and if a criminal officer misuses his office, the dismissal must be done. To curb the tax administration, Ibn al-Muqaffa' proposed to the khalifah that the land owned by the people was measured in size and boundaries, and the owners were listed to facilitate the determination of tax payment limits. Thus, in addition to knowing the extent and boundaries of the land, the people as landowners can avoid tax fraud in the amount of land tax they have to pay (Amin 1993).

Government's Response to the Idea of *Taqnîn al-Ahkâm* by Ibn Al-Muqaffa'

The proposal of Ibn al-Muqaffa' to the government for implementing *taqnîn al-ahkâm* earned a very positive, enthusiastic response from the Khalifah Abû Ja'far al-Manshûr as the holder of the supreme governmental authority at the time, as reflected in the khalifah's instructions delivered to Imam Malik in the hajj season of AH 163 (al-Qâsim 1997).

At the time, the khalifah asked Imam Malik to compile a book containing carefully selected Islamic laws to be treated as national law by avoiding the rigid character of the law according to 'Abd Allâh ibn Umar, making light of the legal character of 'Abd Allâh ibn 'Abbas and the odd legal character of 'Abd Allâh ibn Mas'ûd and by pointing to the moderate laws and laws agreed upon by the companions, so that the people can be brought into the national legal order through the efforts of

Imam Malik (al-Qâsim 1997). The desire of the Khalifah al-Manshûr was inherited by his son, the Khalifah al-Mahdi, who deliberately went and plead before Imam Malik so that the book he had written, *al-Muwaththa'*, could be used as the official school of the state and as the main reference for various decisions.

In response, Imam Malik did not seem to agree with the idea of *taqnîn*, so he refused to fulfil the request of the Khalifah al-Manshûr. Imam Malik's rejection was clear, albeit subtly, in this narration. When asked to compile a book that would be used as a reference or official standard for government by the Khalifah al-Manshûr, Imam Malik refused gently, saying, "May Allah give prosperity to al-Amir (Khalifah al-Manshr). In fact, the Iraqi population will not be willing to ask for my knowledge and opinions" (al-Qâsim 1997). Imam Malik's refusal can be interpreted as not wanting the impression that Islamic law can only apply after it is stipulated as a statute by the government to arise.

Even though Islamic law was not formulated in the form of official law by the government since the thirteenth century AD and thus could not effectively apply throughout the Islamic world, even to deal with only certain laws such as family laws (marriage, divorce and inheritance), during that time, Islamic law was in a very strong position, so even the rulers, with pleasure or not, had to submit to and obey Islamic law (Harisudin 2015). Therefore, even though the idea of *taqnîn al-ahkâm* by Ibn al-Muqaffa' was rejected by Imam Malik and could be applied neither by the Khalifah al-Manshûr nor the later khalifahs, Islamic law remained effective for several centuries later. It was during the *tanzimat* (reorganisation) in Turkey, due to the influence of Western colonialists that colonised Islamic countries, that Islamic law was formulated in the form of *qanûn* or official law, which was enforced nationally by the Ottoman government. The law so made is commonly referred to as *Majalah al-Ahkâm al-Adliyyah* (Azizy 2004).

The negative impact arising after government intervention in enforcing Islamic law turns out to be detrimental to Islamic law itself (Mamdani 2002). Islamic law, which was initially in a very strong position, turned into a very weak and apprehensive position. If in the beginning, the government was subject to Islamic law, now, the other way round is true. Now, Islamic law is conversely subject to the government because its validity depends on the government's will and policy. In Egypt, Islamic law was even replaced by secular Western law. This happened partly because Egypt Muslims grew fed up with Islamic law and were too devastated by Western progress, so they were willing to replace Islamic law, which had been in force for almost 13 centuries, with secular Western law (Siregar 2008). It is important to note that historical events and societal changes are influenced

by many factors and simplifying the complex dynamics involved can lead to an incomplete understanding of the situation. It would be inaccurate to assume that all Muslims in Egypt are universally opposed to Islamic law or that Western progress is the sole determining factor in the adoption of secular law.

While it is true that Egypt underwent significant political and social changes in the 19th and 20th centuries, including the time during which a Western legal system was introduced, the reasons behind these developments are varied and cannot be reduced to a single factor (Solomon and Klerk 2023). The modernisation process in Egypt involved interacting with a variety of external influences, including European colonialism and a desire to build a more inclusive legal framework that accommodated the country's diverse population. In addition, people's attitudes towards and perspectives on Islamic law can differ for each individual and society within a country. Not all Muslims in Egypt will share the same views on Islamic law and the adoption of a secular legal system does not mean a rejection of Islam or a complete disregard for Islamic principles.

The Relevance of Ibn Al-Muqaffa's *Taqnīn* Idea to the Application of Islamic Law in Indonesia

Indonesia is an archipelago with an ethnically, culturally and religiously diverse population (Muluk et al. 2018). Indonesia, predominantly populated by Muslims, was once colonised by the Dutch for 350 years and by the British and Japanese for a short time. Understandably, there is a plurality of legal systems in force in Indonesia, both in terms of time and type. Religious law was introduced to Indonesia along with the arrival of religion on its land. Therefore, as Islam is the majority religion, Islamic law is a legal system that applies in Indonesian society, along with customary law and Western law, with all the instruments and requirements in any aspect or essence complying with all three. So, in brief, the legal system in Indonesia includes three constituents: the customary law system, the Islamic legal system and the Western legal system (Gandara 2020; Siregar 2008). In developing Indonesia's legal system in the future, the three legal systems, in a dynamic sense, will become the raw material for national law.

However, because some regions outside Java still used original justice, *Wetboek van Strafrecht* did not apply in that area. Besides, only a series of articles of Law 1932 No. 80 were declared valid. The area of civil status is still the case, in which case the official colours of the various legal groups apply as a political legacy from the Dutch colonial government, as described in Par. 20, which includes: (1) laws that apply to all residents, (2) customary law that applies to all native Indonesians,

(3) Islamic law that applies to all native Indonesians who are Muslim, (4) laws specifically created for native Indonesians and (5) *Burgerlijk Wet Boek* and *Wet Boek van Koophandel*, which were intended first for Europeans, then declared valid for Chinese people and partially for native Indonesians (Harris 2015).

That description can also be grouped into three legal systems: Western, customary and Islam. The three legal systems are also, at the same time, a standard source of fostering national law when national law reveals its Indonesian face, which until now has not been realised with certainty. In other words, Islamic law, as one of the three raw materials of national law, has become increasingly clear and constitutional with the birth of the Guidelines of State Policy in 1999, a constitutional product in the Reform era. Because it was influenced by the colonialists, especially the Dutch, Indonesia is one of the countries that adopted *taqnīn*. In other words, the Indonesian law state adheres to the flow of “juridical positivism” meaning that all forms of law are only effectively enforced in the Republic of Indonesia after being formally promulgated by the government (Bhandar 2018). Without promulgation in advance, good and complete though it is, the rule of law is still unapplicable in Indonesia (Maksum 2017). Therefore, the fate of all forms of law, including Islamic law, is determined by government policy. As with other laws, Islamic law can only be enacted in Indonesia after the government officially promulgated it. The policy direction in the field of law in 1993, the State Policy Outline, emphasises the realisation of the national legal system that originates from Pancasila and the 1945 Constitution, the translation of which covers three sectors: legal material, legal apparatus and legal infrastructure.

Law making is carried out through an integrated process and democracy based on Pancasila and the 1945 Constitution, producing legal products up to the level of implementing regulations (Wisnaeni and Herawati, 2020). In law making, it is necessary to align with philosophical values with a core sense of justice and truth, sociological values as the prevailing cultural values in society and juridical values in line with the provisions of applicable laws and regulations. Colonial legal products must be replaced by legal products that are imbued by and sourced from Pancasila and the 1945 Constitution. The replacement of colonial legal products and law making generally need to be supported by research and development and by solid legal documentation and information network systems. This means that the material of Islamic law to be applied nationally must go through a fairly long legislation process involving the government and parliament and assisted by all elements of Indonesian Islamic society (Harisudin 2015).

Therefore, despite its many weaknesses, the idea of *taqnīn* by Ibn al-Muqaffa’ seems to be highly relevant to be applied in Indonesia because only in this way can

Islamic law be implemented in the Republic of Indonesia. It is the best alternative among the worst that Muslims must take to enable the implementation of the Islamic sharia, which requires government back-up. In the Indonesian context, this idea has been accepted and practiced in factual life in Indonesia, such as in Law No. 1 of 1974 on Marriage, Law No. 7 of 1989 on Religious Courts, Law No. 17 of 1999 on the Organisation of Hajj and Law No. 38 of 1999 on the Management of Zakat, in addition to Government Regulation No. 28 of 1977 on Representation and Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law. Although it takes the form of a Presidential Instruction, this regulation has a huge influence on the development and growth of the religious courts, especially after the issuance of the Compilation of Islamic Law following the enactment of Law No. 7 of 1989.

Regrettably, the laws containing Islamic legal material are no more than a formalisation of Islamic laws that include worship material such as marriage, pilgrimage and zakat. Efforts of *taqnîn* or legislation of Islamic law outside the issue of worship are still sub-optimal and yield no significant results as it will still need hard work on the part of all parties involved, especially Islamic leaders at the national level and academics engaged in the field of Islamic law from various Islamic universities. Yet, the position of Islamic law as a raw material for national law can be realised in almost all legal material, including criminal law. Through various seminars on national law and the State Policy Outline during the New Order regime, it has been disclosed that the Dutch colonial legacy law would soon be abolished and replaced with a law reflective of the values of the Indonesian society. The codification and unification of laws will lead to the legislation of laws. Ideally, it would replace all Dutch colonial legal products with laws made by Indonesian people (Annisa and Tabassum 2023).

At the moment, the only region absorbing Islamic legal material is Nanggroe Aceh Darussalam (NAD) Province, which is given special autonomy to enforce the Islamic sharia, including criminal law, supported by the establishment of the sharia court (Hamzani et al. 2019; Salim 2015). Historically, the implementation of Islamic law in Aceh is resulted from the development of Islam in the region over the centuries and the role of the sultanate in spreading this religion. Although the context and interpretation of the application of Islamic law may vary, Aceh remains an Indonesia region that applies Islamic law more broadly in its government system. Special autonomy rights were granted to the Aceh government based on a peace agreement named the Helsinki Agreement between the Free Aceh Movement (GAM) and the government of Indonesia (Faisal 2023). If at some point in time all Muslims or at least the majority of parliamentary members in this country give their approval, the application of the Islamic sharia in totality

in Indonesia becomes possible (Peletz 2020). In the Reform era, the possibility to arrive at this end is high because currently, Islamic law, in addition to Western law and customary law, are the recognised sources of national law as stated explicitly in 1999. As the State Policy Outline was established in the Reform era, these three sources were recognised in the New Order era, but their implementation is still largely disguised for fear of the threat of power. At that time, the authorities were frightened by and sometimes hostile towards Islam as the New Order regime was dominated by the Dutch government's doctrine of "Islamic politics" developing during the colonial time in Indonesia. Although it must also be acknowledged that the New Order authorities then gradually approached Islam, it had already become a helpless condition, which ended with the overthrow of the New Order power in early 1998 following a wave of reform. When the New Order regime was in power, Islamic law was not explicitly given a place in national law. Until this moment, political, commercial, criminal and other matters are still arranged following laws inherited from the Dutch government (Azizy 2004). Not only does it mean that only one national law material is taken into account, but it also means that the law in Indonesia, which is applied to the majority Muslim population, essentially is an extension of the Dutch government.

In this Reform era, Islamic law must find a place in the stead of the Dutch colonial legacy law (Hamzani et al. 2019). In this way, national law truly reflects the characteristics and values of the Indonesian society, which is religious, independent and free from the influence of the values and formalisation of the Dutch government. There is no longer any reason to fear Islamic law, as in the days of the Old Order and the New Order, which still feared Islamic politics. The fight for the legislation of Islamic law (*taqnîn al-ahkâm*) on matters other than worship should not be done by force, coercion and indoctrination. In realising this idea, two conditions must be met. First, democratic ways reflecting free competition must still be promoted, with a room for eclecticism, as opposed to coercion from the ruling government. Second, efforts of the legislation of Islamic law (*taqnîn al-ahkâm*) must be supported by academic arguments that can be accounted for, so that various elements of society, especially the political elites in the House of Representatives and the government, can accept that the legislation of Islamic law (*taqnîn al-ahkâm*) on matters other than worship is important as it is believed that it will benefit society by creating essential justice, welfare and security. In addition, academic arguments also provide positive content for the intellectual development and progress of Indonesian Muslims, who have been seen as passive and inclined toward literalism in adopting classical books and against renewal.

Conclusion

Ibn al-Muqaffa' was concerned about differences in legal decisions at the court level, even though the legal cases handled were the same. Therefore, he proposed *taqnîn al-ahkâm* to the Khalifah al-Mansur for the unification of law. In response, Imam Malik, who was requested by the khalifah to make a carefully selected compilation of Islamic laws, asked that his book *al-Muwaththa'*, a reference for legal decisions, be used instead, showing a subtle rejection. Ibn al-Muqaffa's proposal is contained in *Risâlah al-Shahâbah*, which covers four important areas: the military, justice, employee recruitment and tax collection. *Taqnîn* is the stipulation of a set of laws or regulations approved by the state and officially applied to all components of society to create benefits. Ibn al-Muqaffa's idea of *taqnîn* is relevant to be applied in Indonesia because it enables Islamic law to be enforced in totality in Indonesia. The three sources of law in Indonesia, Western, Islamic and customary law legal systems, may be applied while prioritising democratic methods and scientifically justifiable academic arguments. In the effort to imbue national law with the personality of the Indonesian nation, which is predominantly populated by Muslims, the study of Islamic law needs to be reoriented, which includes reforming the study and the approach used.

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