
**The Yusuf Qardhawi's Thought on
al-Daulah al-Shar'iyah al-Dustūriyyah and Its Relevance to
the Concept of Indonesian Polity**

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Abstract

This article aims at scrutinising the Yusuf Qardhawi's thought on the concept of *al-daulah al-shar'iyah al-dustūriyyah* and its relevance in dealing with the development of the concept of Indonesian polity. To be more specifically, this study elaborates the concept of *al-daulah al-shar'iyah al-dustūriyyah* and its relation to the enforcement of Islamic law (*sharī'ah*) in Indonesia. Obviously that scholars have produced some studies on Islam and the state (*daulah*) from various approaches and perspectives. However, the specific and in-depth research on the concept of *al-daulah* mainly initiated by Yusuf Qardhawi has seemed to be a rare topic of academic research. Accordingly, this article examines the topic comprehensively without neglecting the Indonesian context. This article argues that Indonesia as a state has accommodated the principles of *al-daulah al-shar'iyah al-dustūriyyah*, which substantially has appreciated universal values of *sharī'ah (al-maṣlaḥah al-‘ammah)*. Yet, those values such as freedom, justice and equality, in practice, have been still not fully enforced. Although Indonesia has been claimed as the Pancasila democracy-based country, violations of the values are still rife.

Abstrak

Artikel ini membahas tentang pemikiran-pemikiran Yusuf Qardhawi tentang konsep *al-daulah al-shar'iyah al-dustūriyyah* dan implementasinya di negara Indonesia. Tujuan studi ini adalah untuk mengeksplorasi konsep *al-daulah al-shar'iyah al-dustūriyyah* dan implementasinya di negara Indonesia. Sejauh penelurusan ilmiah yang dilakukan, telah banyak sarjana yang membahas serta mengkaji seputar tema Islam dan negara (daulah) dengan berbagai pendekatan dan perspektif. Namun, terkait konsep *al-daulah al-shar'iyah al-dustūriyyah* perspektif Yusuf Qardhawi secara spesifik serta mendalam dengan disertai analisa implementasinya di negara Indonesia tampaknya belum disentuh oleh para sarjana. Maka dari itu, artikel ini mengkaji bagian itu dengan komprehensif dan tidak mengesampingkan konteks ke-Indonesiaan. Artikel ini secara argumentatif menyatakan bahwa negara Indonesia telah mengakomodir prinsip-prinsip *al-daulah al-shar'iyah al-dustūriyyah* yang diformulasi oleh Yusuf Qardhawi, yang secara substansial mengapresiasi nilai-nilai *sharī'ah* yang universal (*al-maṣlāḥah al-‘āmmah*). Meskipun demikian, nilai-nilai tersebut, misalnya seperti kebebasan, keadilan, kesetaraan dan keadilan, dalam tataran realitas masih perlu untuk diperjuangkan. Alasannya adalah, meskipun Indonesia adalah negara yang berpijak di atas fondasi demokrasi Pancasila, yang menjunjung keempat nilai tersebut, namun dalam praktiknya tampaknya tidak bebas dari praktik-praktik korupsi dan dehumanisasi.

Keywords: *al-daulah al-shar'iyah al-dustūriyyah; formalization of sharī'ah; Indonesian polity; Yusuf al-Qardhawi; al-maṣlāḥah al-‘āmmah; maqāṣid al-sharī'ah.*

Introduction

The development of the Islamic populism movement in Indonesia has contributed to the intensifying narratives of the formalisation of *sharī'ah* and the Islamic state in Indonesia.¹ The term Islamic populism gain popularity after a series of demonstrations initiated by Indonesian Muslims so-called "Aksi Bela Islam" (action of defending Islam).² The movement was triggered by the statement of the governor of the Special Capital Region (DKI) Jakarta, namely Basuki Tjahaja Purnama or Ahok, regarding a verse in al-Quran, precisely al-Maidah verse 51, which was later deemed to have committed the crime of blasphemy.³ Commencing from the drive to sue Ahok, the movement eventually turned into a political action supporting one of the candidates for governor of DKI Jakarta and also subsequently one of the candidates for president of Indonesia.⁴ Furthermore, Islamic populism is not barely in the form of backing for political candidacy, but also the emergence of a discourse on implementing *sharī'ah* in Indonesia in political campaigns.⁵ The progress of the discourse was also encouraged by the involvement of Muhammad al-Khattaath, a former leader of Hizbut Tahrir Indonesia (HTI), in the Prabowo-Sandi campaign team in the 2019 Presidential Election.⁶ Al-Khattaath is one of the enthusiasts of the enforcement of

¹ Hasnil Basri Siregar, "Islamic Law in a National Legal System: A Study on the Implementation of Shari'Ah in Aceh, Indonesia." *Asian Journal of Comparative Law* 3, no. 1 (2008): 4.

² Nanang Hasan Susanto, "Politicization of Religion and the Future of Democracy in Indonesia in Populism Theory." *Journal for the Study of Religions and Ideologies* 18, no. 54 (2019): 139-158; Vedi R. Hadiz, "Imagine all the People? Mobilising Islamic Populism for Right-Wing Politics in Indonesia." *Journal of Contemporary Asia* 48, no. 4 (2018): 566-583; Marcus Mietzner, "Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia." *Pacific Affairs* 91, no. 2 (2018): 261-282.

³ Dimitar Gueorguiev, Kai Ostwald, and Paul Schuler. "Rematch: Islamic Politics, Mobilisation, and the Indonesian Presidential Election." *Political Science* 70, no. 3 (2019;2018;): 240-252.

⁴ Edward Aspinall and Marcus Mietzner. "Southeast Asia's Troubling Elections: Nondemocratic Pluralism in Indonesia." *Journal of Democracy* 30, no. 4 (2019): 104-118.

⁵ Fealy Greg, "Apocalyptic Thought, Conspiracism and Jihad in Indonesia." *Contemporary Southeast Asia* 41, no. 1 (2019): 63-85.

⁶ Hari Hariyanti, "Perwakilan GNPf dan PA 212 Masuk Tim Kampanye Prabowo-Sandi" *Liputan6*, September 20, 2018. <https://www.liputan6.com/pilpres/read/3648140/perwakilan-gnpf-dan-pa-212-masuk-tim-kampanye-prabowo-sandi>

the of sharia in Indonesia, through the terminology of "NKRI Bersyariah", namely Indonesia as a *shari'ah*-based nation state.⁷

Aside from HTI, "NKRI Bersyariah" is also campaigned by radical groups that aspire to the establishment of *shari'ah* and the Islamic state, including the Indonesian Mujahidin Council (MMI), Laskar Jihad, the Islamic Community Forum (FUI), Betawi Rembug Forum (FBR), Laskar Mujahidin, the Islamic Youth Movement, and the Islamic Defenders Front (FPI).⁸ According to Ahmad Asroni, the groups promote *shari'ah* and the Islamic state's implementation for three reasons. First, they rely on the theological doctrine, which commands the enforcement of Islamic law. Second, they negate the dichotomy between the state and Islam. Third, they believe that Islamic law is the panacea to all national matters.⁹

On the other hand, the idea of implementing *shari'ah* and an Islamic state is being challenged by secular groups. According to Alford in Robertson's work, political secularisation grows in Anglo-American countries that strictly separate religion and politics.¹⁰ Meanwhile, Haedar Nashir emphasised that political secularism in Indonesia has similarities to that existed in Anglo-America, which places religion as a private space and politics as a public space that cannot be intervened by religious dogmas.¹¹ In this case, secular groups repudiate religion to interfere in Indonesian political affairs.

This debate represents two extreme groups in perceiving the enactment of *shari'ah* in Indonesia, namely fundamentalism and secularism. The debate then prompted the emergence of a substantialist perspective as an alternative to the two extreme

⁷ Ahmad Najib Burhani, *Heresy and Politics: How Indonesian Islam Deals with Extremism, Pluralism, and Populisme* (Yogyakarta: Suara Muhammadiyah, 2020), 6-7; Fahlesa Munabari, "Reconciling Sharia with 'Negara Kesatuan Republik Indonesia': The Ideology and Framing Strategies of the Indonesian Forum of Islamic Society (FUI)." *International Area Studies Review* 20, no. 3 (2017): 242-263.

⁸ Haedar Nashir, *Gerakan Islam Syariat: Reproduksi Salafiyah Ideologis di Indonesia* (Jakarta: PSAP Muhammadiyah, 2007), xii.

⁹ Ahmad Asroni, "Pemikiran Ahmad Syafi'i Ma'arif Tentang Negara dan Syariat Islam di Indonesia" *Millah* 10, no. 2 (2011): 357.

¹⁰ Haedar Nashir, "Sekularisme Politik dan Fundamentalisme Agama: Ketegangan Kreatif Hubungan Agama dan Politik" *Unisia*, no. 45 (2002): 157.

¹¹ Haedar Nashir, "Sekularisme Politik," 158; See also Elson, R.E. "Nationalism, Islam, 'Secularism' and the State in Contemporary Indonesia." *Australian Journal of International Affairs: Religious Nationalism and Nation-Building in Asia* 64, no. 3 (2010): 328-343.

approaches. Substantialists have confidence in the importance of implementing *sharī'ah* through substantialisation instead of formalisation, namely by accommodating and applying universal Islamic values such as independence, justice, and equality.¹²

The dynamics of fundamentalism, secularism, and substantialism signify the diversity of responses in searching for alternative solutions to various political, social, economic, and educational problems in Indonesia. In this regard, a contemporary Islamic scholar Yusuf Qardhawi conceptualized *al-daulah al-shar'iyah al-dustūriyyah*, by finding a middle ground between two extreme thoughts on the formalisation of *sharī'ah* and the Islamic state. Therefore, this article scrutinises the principles of *al-daulah al-shar'iyah al-dustūriyyah* from the perspective of Yusuf Qardhawi and their application in Indonesia. The goal is to provide alternative solutions to the dynamics between fundamentalism, secularism, and substantialism. This article then contextualises the concept of *daulah al-shar'iyah al-dustūriyyah* towards the Indonesian state by substantially accommodating its principles.

In the Indonesian context, this concept is embodied in the principles of deliberation, protection of the weak, guarantees of rights and freedoms, and the formation of morals and character, although practically speaking, the implementation of these principles still needs improvement. In general, the contextualisation of *al-daulah al-shar'iyah al-dustūriyyah* in the perspective of Yusuf Qardhawi can be a middle way between the two extreme groups regarding the formalisation of *sharī'ah*.

The Biographical Sketch of Yusuf Qardhawi

Yusuf Abdullah al-Qardhawi, known as Yusuf Qardhawi, was born on September 9, 1926, in the village of Safat Turāb, the burial place of one of the Prophet's companions, Abdullah ibn al-Harits. Qardhawi learned to memorise the Qur'an from the age of five, and when he was seven, he studied general sciences in elementary schools such as mathematics, history, health sciences, and others. Qardhawi managed to memorise all the verses in the Qur'an before the age of ten.¹³ After finishing

¹² Abdul Basith, "Paradigma dan Pendekatan Pemikiran Munawir Syadzali Tentang Studi Islam," *al-Hikmah Jurnal Studi Keislaman* 6, no. 1, (2016): 70-71; David M. Bouchier, "Two Decades of Ideological Contestation in Indonesia: From Democratic Cosmopolitanism to Religious Nationalism." *Journal of Contemporary Asia* 49, no. 5 (2019): 1-21.

¹³ Muhammad al-Majdhūb, *'Ulama' wa Mufakkirūn 'Araftuhum* (Riyaḍ: Dār al-Shawāf, 1992), 461-462; Nesya Shemer, "Islamic Law and Political Ideology: Yusuf Al-Qaradawi's Renewed Interpretation of Islamic Prayer Laws." *The American Journal of Islamic Social Sciences* 33, no. 1 (2016): 52.

elementary school, Qardhawi continued his junior and senior high school education in Ṭanṭā. He completed junior high school in four years and high school in five years.

After completing his studies at Ṭanṭā, he then continued the higher education at al-Azhar Cairo.¹⁴ At al-Azhar, he studied at the Faculty of Theology (*Uṣūl al-Dīn*) and successfully completed his studies in 1953 as the best graduate of one hundred and eighty students. Afterward, he continued the studies at the Faculty of Arabic for two years, and yet again became the best student out of five hundred students and received an international certificate and teaching diploma. Furthermore, he continued his studies at the Arabic Research and Studies Institute and later held a diploma in literature and languages.¹⁵

Once holding a diploma, he then continued the postgraduate studies at the Faculty of Theology, specifically in the Department of Tafsir and Hadith at al-Azhar University in Cairo. Due to the difficulty of the Masters level examinations, none of his colleagues passed except him in 1960. Subsequently, he continued at the doctoral level and wrote a dissertation entitled "Al-Zakāh fī al-Islām" which was initially expected to be completed within two years but had to be delayed up to thirteen years because of the political crisis in Egypt. He finally completed his doctoral studies in 1973.¹⁶

Yusuf Qardhawi contributed two legacies to Muslim society, namely ḥarakah and ṣahwah Islamiyyah, and Islamic legal studies.¹⁷ In the field of *da'wah ḥarakah* and *ṣahwah Islamiyyah* (Islamic movement and activism), he influenced to awaken Muslims from backwardness, stagnation and repeal them from various internal conflicts through the renewal of thought.¹⁸ In the field of jurisprudence (*fiqh*), he mastered many Islamic sciences, including the knowledge of al-Qur'an, hadith, *uṣūl al-fiqh*, and related sciences. Qardhawi is acknowledged as a moderate scholar who endorses Islamic moderation, including in terms of establishing sharia and the Islamic

¹⁴ Muhammad al-Majdhūb, *'Ulamā' wa Mufakkirūn 'Araftuhum*, 465.

¹⁵ Muhammad al-Majdhūb, 465.

¹⁶ Muhammad al-Majdhūb, *'Ulamā' wa Mufakkirūn 'Araftuhum*, 465.

¹⁷ Nesya Shemer, "Islamic Law and Political Ideology: Yusuf Al-Qaradawi's Renewed Interpretation of Islamic Prayer Laws." *The American Journal of Islamic Social Sciences* 33, no. 1 (2016): 52.

¹⁸ David H. Warren, Christine Gilmore, and Christine Gilmore. "One Nation Under God? Yusuf Al-Qaradawi's Changing Fiqh of Citizenship in the Light of the Islamic Legal Tradition." *Contemporary Islam* 8, no. 3 (2014): 217-237.

state.¹⁹ In this regard, he wrote a specific book on the Islamic state, namely *Fiqh al-Daulah fī al-Islām*.

Islamic State Principles in Yusuf Qardhawi's Perspective

In the books "Min Fiqh al-Daulah fī al-Islām" (1997), and "Madkhal lil-Dirāsāt al-Sharīah al-Islāmiyyah" (2001), Yusuf Qardhawi specifically introduces the foundation of a *sharī'ah*-based state so-called *al-daulah al-shar'īyyah al-dustūriyyah*,²⁰ a constitutional state (*daulah*) based on the basic principles of *sharī'ah*. The constitution of the *daulah* must be reflected in Islamic rules and *sharī'ah* laws that are contained in al-Quran and al-Hadith. According to Qardhawi, formalistic matters such as the form and the name of the state system are not the most imperative features of the concept.²¹ In his perspective, an Islamic state might choose a form of government that is relevant to the needs and benefits of the local community,²² although historically, the Islamic state is better known as *imāmāt* or *khilāfah*. Admittedly, *imāmāt* and *khilāfah* have a great and profound meaning in Islam. *Imāmāt*, taken from the term in prayer, means leadership as a role model for humans. Meanwhile, the *khilafah* is a representative on behalf of the Prophet Muhammad to protect religion and regulate the world.²³

Imam, caliph, or leader of the *daulah* is one of the people of a country who might be right or might be wrong, do good or do evil. If he does good, then Muslims must follow him, and if he does wrong, they must correct him. In this regard, the Caliph Abu Bakr once said in his speech that the state's leader is not a saint; therefore, he is not above the law. The leader's position is not mere respect but also the imposition and transfer

¹⁹ M. Khalilurrahman, "Syaikh Yusuf Qardhawi: Guru Umat Islam pada Masanya," *Jurisdictione Jurnal Hukum dan Syariah* 2, no. 1 (2011): 173-174; Ron Shaham, "The Rhetoric of Legal Disputation: Neo-Ahl Al-Ḥadīth Vs. Yūsuf Al-Qaradāwī." *Islamic Law and Society* 22, no. 1/2 (2015): 114-141; Ana Belén Soage, "Sheikh Yūsuf al-Qaradawi: A Moderate Voice from the Muslim World?" *Religion Compass* 4, no. 9 (2010): 563-575.

²⁰ Yusuf Qardhawi, *Fiqh Daulah dalam Perspektif al-Quran dan Sunnah* (Jakarta: Pustaka al-Kautsar, 1997), 46.

²¹ Yusuf Qardhawi, *Fiqh Daulah*, 49; Aaron Rock-Singer, "Scholarly Authority and Lay Mobilization: Yusuf Al-Qaradawi's Vision of Da'Wa, 1976-1984." *The Muslim World* 106, no. 3 (2016): 588.

²² Sigit Ridwan Abdullah, "Tujuan Negara dalam Islam Menurut yusuf Qardhawi," *Asy-Syari'ah* 19, no. 1 (2017): 34.

²³ Kamaruzzaman Bustaman Ahmad, *Relasi Islam dan Negara: Perspektif Modernis dan Fundamentalis* (Magelang: Indonesiatara, 2001), 28-31.

of obligations originating from the people's mandate and Islamic rules. Not surprisingly, in Islamic history, a caliph had lost a case before the court, namely when judge Shuraih decided to defend *ahl al-dhimmah* and defeated the case filed by Caliph Ali ibn Abi Talib for the sake of the public interest.²⁴

To strengthen the foundation of the state, Qardhawi outlined several principles for the implementation of *sharī'ah*. First, deliberation-based daulah. Islamic daulah is the state that upholds the principles of consensual and contractual policymaking. *Daulah Islam* is not based on inheritance, limiting power to one family or relative so that children can inherit power from their father or grandchildren from their grandparents, as they receive an inheritance such as the property, even if the heirs are despotic and incompetent. *Daulah Islam*, according to Qardhawi, is similar to a democratic system in the election of leaders by the ummah, and the principle of impulsiveness to appoint a leader.²⁵ Another similarity is that a leader must be accountable before the legislative council of *ahl al-shūra* or *ashāb al-hal wa al-aqd* (a kind of parliament). In fact, the legislature can overturn the leader if he deviates, commits a wrongdoing, or disobeys public advice.²⁶

However, democracy has a negative side because it does not have principles or values that can control the boundaries of public activities. For example, in the name of a legislative council decision, the public can override core principles and assign destructive values by legalising *haram* things and prohibiting *halal* things. Not surprisingly, in the name of democracy, the American parliament allows to produce, enforce, and trade liquor, even though people are aware of its harmful impact on individuals, families, and society.²⁷ Moreover, several Western democracy-based countries tolerate same-sex marriage; between men and men, or women and women. In addition, capitalist democracy allows usury and the accumulation of wealth, which on the one hand benefits the interests of the rich and influential, and on the other hand, oppresses marginalised people.²⁸

The spirit of democracy in Indonesia is unlike that has developed in the West, however. In the country, democracy is constrained by norms overlooked in the West.

²⁴ Yusuf Qardhawi, *Fiqh Daulah*, 50.

²⁵ Yusuf Qardhawi, *Fiqh Daulah*, 52.

²⁶ Yusuf Qardhawi, *Fiqh Daulah*, 52.

²⁷ Yusuf Qardhawi, *Madkhal li Dirásat al-Syari'ah al-Islâmiyyah* (Cairo: Maktabah Wahbah, 2001), 107.

²⁸ Yusuf Qardhawi, *Madkhal li Dirásat al-Syari'ah*, 107.

According to Zakiyuddin Baidhawiy, the foundation of Pancasila adopted by the Indonesian state has substantially accommodated the values of *shari'ah*.²⁹ Hasnan Bachtiar affirmed this argument by stating that in the development of the *ummah* in Indonesia, the progressive spirit of Islam encourages people to respect and practice democracy.³⁰ The first precept in Pancasila, namely divinity, is the basic foundation that deeply influences the dynamics of the nation. In this regard, the Indonesian state guarantees the integration of spirituality with various aspects of life such as social, political, and economic. Thus, the implementation of Indonesian democracy does not negate the existing norms in society.

Furthermore, in Pancasila democracy, the concept of *shūra* is a core element. In Qardhawi's perspective, *shūra* contains boundaries that cannot be violated.³¹ *Shūra* is rooted in faith-based Islamic principles, charity-based pillars, morals-based commandments, and certainty-based law. These foundations are a notable guide for society in attaining a just and harmonious life. From the perspective of Islamic law, members of parliament and the government must refer to all those foundations. Because, for Qardhawi, Allah's decree cannot be denied by humans, and Allah's prohibitions cannot be violated by humans as well. In this context, Pancasila is coherent with the manifestation of the *shūra* idea conceptualised by Yusuf Qardhawi, as Pancasila is a national consensus generated by the nation's deliberations' founders.³²

Second, *daulah* that shields the weak. *Daulah Islam* is a state that safeguards weak people, not rather to cover the interests of the capital or political rulers. *Daulah* requires the expenditure of *zakat* taken from the rich and then distributed to the poor, as *daulah* also entails other income, such as a ransom so that weak and poor people, orphans, and *ibn al-sabīl* may acquire their rights, and accordingly, wealth does not rotate among the rich ones, as stated in al-Quran.³³ Islam obliges *daulah* to guarantee the needs of all kinds of weak people, either due to the absence of wealth such as the poor, a lack of freedom such as slaves, the absence of protectors such as orphans, the absence of relatives such as widows, limited abilities such as the elderly and children,

²⁹ Zakiyuddin Baidhawiy, "Negara pancasila Negara Syariah," *Ma'arif* 10, no. 1 (2015): 55-56.

³⁰ Hasnan Bachtiar, "Towards a progressive interpretation of Ummah." *Indonesian Journal of Islam and Muslim Societies* 8, no. 1 (2018): 87-116.

³¹ Yusuf Qardhawi, *Fiqih Daulah*, 53.

³² Hasnan Bachtiar, "Dar al-'Ahd Wa Shahadah: Upaya dan Tantangan Muhammadiyah Merawat Kebhinekaan," *Ma'arif* 14, no. 1 (2019): 75.

³³ Q.S. al-Hasyr [159]: 7.

or people far from homes such as travelers.³⁴ Daulah Islam has a fundamental responsibility to protect and stand by them and provide adequate assurances to obtain their rights, especially clothing, food, and shelter, including preventing the arbitrariness of the rulers of capital who might exploit them.³⁵

Limits

Shari'ah has concerned about the weak significantly. In this context there are certain limits that allow rationally, for instance, a weak thief who commits in crime due to he or she has no choice but doing that bad action. *Shari'ah* has considered the action may be motivated by an urgent need (emergency). In this situation there is doubt to immediately cut off a hand of the thief (punishment). It was done by Umar bin Khattab to the children of Hathib ibn Abu Battaah who stole, but there was no punishment to them. It was their master threatened to carry out the punishment if they were caught stealing again.³⁶

Third, the *daulah* that protects human rights and freedom. *Daulah Islam* is the state that protects human rights and freedom as manifestation of faith and commitment. The right to life, property rights, the right to live in prosperity, the right to freedom of religion, soul, self-respect, property and descent are considered as the main significance in the view of Islamic law.³⁷ The task of the Islamic state is to try to achieve the two fundamental goals of the various life goals of each individual, namely welfare and security.³⁸ It is because, if humans feel that they have prosperity and security, then life will be peaceful and serene, as reminded in the Qur'an.³⁹

Religious freedom is something that is emphasized in Islam. Islam protects the freedom to embrace religion for anyone who lives in its territory. This freedom is given to everyone who believes in a different religion.⁴⁰ However, in the context of

³⁴ Yusuf Qardhawi, *Fiqih Daulah*, 61.

³⁵ Yusuf Qardhawi, *Madkhal li Dirásat al-Syari'ah*, 133.

³⁶ Yusuf Qardhawi, *Fiqih Daulah*, 70.

³⁷ Yusuf Qardhawi, *Madkhal li Dirasat al-Syari'ah*, 60.

³⁸ Yusuf Qardhawi, *Fiqih Daulah*, 72.

³⁹ Q.S. Quraisy [106]: 4.

⁴⁰ Yusuf Qardhawi, *Fiqih Daulah*, 73.

Indonesia which has also accepted and ratified human rights, according to Sodikin, freedom of religion is also limited by the applicable legal regulations.⁴¹

Freedom of speech and expression is also guaranteed in Islam. Even from an Islamic perspective, it is considered the greatest freedom and it is even included in obligations, not just rights and freedoms. In a situation where a person faces evil, he is obliged to prevent it while he is able to do so.

Freedom of science and thought is also guaranteed by Islam and the Islamic state, even thinking is an Islamic obligation. Seeking knowledge is also an obligation for every Muslim. If knowledge and thinking are two obligations, then the problem is bigger than just a right that should get attention. *Daulah Islam* is the state that opens the door widely to various scientific projects throughout history, especially in the era of the advancement of civilisation.⁴² Scientific freedom is one of the various forms of implementation of the *maqāsid al-sharī'ah*; *hifz al-'aql*, which according to Jasser Auda is understood as the development of scientific thought, a journey of studying and suppressing the mentality of imitation.⁴³

Fourth, *daulah* which has principles and morals. *Daulah Islam* is the state that has principles and character, is committed and does not deviate, inside or outside its territory, faces people both who are liked or not. *Daulah Islam* does not behave with two faces (hypocrisy), does not speak with two tongues (manipulation), does not wish to reach a truth in a false way, does not wish to manifest good by using bad means. *Daulah Islam* believes in a good cause and a right means at the same time. *Daulah Islam* rejects efforts to achieve goals by justifying any means, such as people who take advantage of usury to build mosques, or people who steal to support the poor.⁴⁴

Daulah Islam believes in one morality, namely morals that are generally accepted for all human beings, not divided into various groups.⁴⁵ *Daulah Islam* requires the fulfillment of promises to all people, loved and hated. *Daulah Islam* requires every

⁴¹ Sodikin, "Hukum dan Hak Kebebasan Beragama," *Jurnal Cita Hukum* 1, no. 2 (2013): 185.

⁴² Yusuf Qardhawi, *al-Shahwah al-Islamiyyah wa Humum al-Wathan al-Arabi wa al-Islami* (Cairo: Maktabah Wahbah, 1997), 174.

⁴³ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah* (Bandung: Mizan, 2015), 320.

⁴⁴ Yusuf Qardhawi, *Fiqih Daulah*, 74.

⁴⁵ Yusuf Qardhawi, *Al-Hulul al-Mustawradah wa Kaifa Janata ala Ummatinā* (Cairo: Maktabah Wahbah, 1993), 256.

individual to hold a mandate and has principles to always be honest. If some countries today require the enforcement of moral values when peace, then abolish the application of those moral values while in the context of war, then the Islamic state, according to Qardhawi, will never be free from moral values in times of peace or war.⁴⁶

Indonesia and the Concept of *al-Daulah al-Shar'iyah al-Dustūriyyah*

It is an indisputable fact that in Indonesia the power of political Islam is dominant in influencing the dynamics of national politics. On the one hand it is caused by the reality that the majority of the population of this country is Muslim. On the other hand, it cannot be denied that for certain communities, Islam is indeed an ideology that must be fought for formally in the state constitution. For Yusuf Qardhawi, fundamentally Muslims are obliged to uphold Islamic law in their country.⁴⁷ It is based on various doctrines in the Qur'an which clearly oblige us to apply the law according to the law established by Allah.⁴⁸ Or in another verse it is emphasised that Muslims should not follow some of the contents of the Qur'an and deny some of the others.⁴⁹ That means, for Qardhawi, it is an obligation for Muslims to implement Islamic law in a *kāffah*, in the sense that they do not take some and reject some of the others.⁵⁰

In the context of Indonesia, where the majority of the population is Muslim, following Qardhawi's way of thinking, it should be fought for Islamic law to be upheld in this country. However, the reality is not as expected, many Muslims firmly reject the formal application of Islamic law in this country. In the context of discourse, it is easy to see that the views of Muslims are very diverse about Islamic law. However, there are at least three dominant discourses that have been developing in the public sphere, namely formalisation, substantialisation and secularisation.

Those who support the formalisation of *sharī'ah* wish that Islam will become a formal foundation in every aspect of life in this country. They have made many efforts, and the most visible politically is the effort to restate seven words (with the obligation to implement Islamic law for its adherents) into the constitution of this country. However, it must be admitted that the views of those who support the formalization

⁴⁶ Yusuf Qardhawi, *Madkhal li Dirásat al-Syari'ah*, 110.

⁴⁷ Yusuf Qardhawi, *Fiqh Daulah*, 250.

⁴⁸ Q.S. al-Maidah [5]: 49.

⁴⁹ Q.S. al-Baqarah [2]: 85-86.

⁵⁰ Yusuf Qardhawi, *Fiqh Daulah*, 251.

of Islamic law also vary, for example there are groups who wish to completely overhaul the institutions and political systems that prevail in this country.

Those who support the formalization of *shari'ah* are the radical groups mentioned in the introduction. Meanwhile, the Indonesian mainstream organizations that have quantity of followers such as Nahdlatul 'Ulama (NU), Muhammadiyah, Persis, al-Irsyad are not interested in their ideas.⁵¹ According to Tarmizi Taher, as quoted by Mualif, there are three things that are indications of radical understanding. First, radicalism is a form of response to the problems faced. Second, their movement is not limited to resistance but tries to change the established order with others who they think are better and capable of solving problems. Third, they believe in the effectiveness and truth of the ideologies and programs they offer.⁵² This group of course also rejects the democratic mechanisms and state administration system that has been running so far, and they offer other constitutional models which they believe are based on God's law, for example the caliphate system. However, there are also groups that do not absolutely reject the constitutional system in this country, but want the constitution of this country to be formally based on Islamic law. They do not absolutely reject the existing democratic mechanism. This group is one of the models for the movement to try to bring back the Jakarta Charter.

Furthermore, according to YUSDANI, he stated that the bearers of the formalisation of *shari'ah* in Indonesia did not yet have a clear concept and did not refer to the results of valid scientific research and in-depth analysis, so it was too easy to simplify problems as if by formalising *shari'ah* and implementing the caliphate system will solve various problems in Indonesia.⁵³ According to Ahmad Asroni, Ahmad Syafii Maarif is one of the Indonesian Muslim scholars who does not question the formalisation of *shari'ah* as long as it is carried out in a legal and constitutional manner. Even so, Syafii Maarif remains critical of those who carry out the formalization of sharia and the establishment of an Islamic state. Because what is being carried out could actually have a negative impact on the Indonesian state, and

⁵¹ Azyumardi Azra, *Islam Substantif: Agar Umat tidak Jadi Buih* (Bandung: Mizan, 2000), 196.

⁵² M. Mualif, *Gerakan Faham Radikal, Eksklusif, dan Ekstrim di Indonesia*, Prosiding Seminar Nasional, Harmonisasi Keberagaman dan Kebangsaan bagi Generasi Milenial, Lembaga Kajian Keagamaan, Universitas Pamulang, 14 Desember 2019, 43.

⁵³ YUSDANI, "Formalisasi Syariat Islam Dan Hak Asasi Manusia Di Indonesia," *Al-Mawarid* 16, (2006): 207.

according to him, the formalisation of *sharī'ah* has the potential to cause horizontal conflict.⁵⁴

The second group is a group supporting the deformalisation or substantialisation of Islamic law. They support Islamic law, even though they do not want it to be formalised or included in the state constitution. Their reason is that they are worried that a conflict will disrupt inter-community and inter-religious relations in the country. These substantialists suggest that Muslims emphasise the high and noble aspects of Islamic law (*maqāṣid al-sharī'ah*) rather than the formalisation of Islamic law itself. This means that even though formally Islamic law is not included in the constitution, Muslims are still trying to uphold the values of sharia through the attainment of the general goals of Islamic law (*maqāṣid al-'āmmah*), such as justice, welfare, equality and others.⁵⁵ According to Rahmatunnair, one of the moderate attitudes related to the problem of the formulation of Islamic law in the Indonesian constitutional system is that it is sufficient to do it in a transformative manner that puts forward the values and objectives of the more substantial sharia.⁵⁶

Meanwhile, secularisation supporters critically think that Indonesia does not need the application of Islamic law. For them Islam does not need to regulate state affairs in this country. What this nation needs to do is reform the government and state administration system if there are certain things that need to be renewed. The deficiencies that have become the consequences of the system will be evaluated through a mechanism of checks and balances and persistent research and development. They believe that there is no perfect system, even Islamic law, so these two mechanisms are needed to support the process of system improvement. In this context, Yusuf Qardhawi is one of those people who firmly believe that Islamic law is a perfect and all-round rule covering various aspects of human life. Consequently, for Qardhawi, Muslims must struggle for Islamic law in any situation.⁵⁷ However, what is interesting from Qardhawi's point of view is that his realistic and contextual conception of understanding Islamic law. This is where *fiqh al-maqāṣid*, *fiqh al-awlawiyyāt*, and *fiqh al-muwāzanah* are very relevant to become fundamental considerations in the struggle for the enforcement of Islamic law in Indonesia.

⁵⁴ Ahmad Asroni, "Pemikiran Ahmad Syafi'i Ma'arif," 372.

⁵⁵ Jasser Auda, *Membumikan Hukum Islam*, 36.

⁵⁶ Rahmatunnair, "Paradigma Formulasi Hukum Islam di Indonesia," *Ahkam* 12, no. 1 (2012): 106.

⁵⁷ Yusuf Qardhawi, *Fiqh Daulah*, 258-259.

In this case, Qardhawi is one of the scholars who want the formalisation and substantialisation of Islamic law to be a struggle that is carried out simultaneously.⁵⁸ Accordingly, he rejects the views of some that are too formalist or too substantial in interpreting Islamic law. This is in accordance with his criticism of the flow which he calls *al-zāhiriyyah al-judad*; people who only look at the textual texts and ignore their substance, as well as criticism of the people he calls *al-mu'aṭṭilah al-judad*; who are too exaggerated in claiming the truth of the *maqāṣid* so as to overhaul the standard legal texts. That is why he does not have a viewpoint like the formalists who want premature enforcement of Islamic law, just as he also does not want the views of substantialists who only interpret the practice of sharia in an informal form. For Qardhawi, the enforcement of Islamic law is a long journey and a persistent struggle. He hopes that in the struggle to uphold Islamic law, Muslims must rely on the principles that characterise Islamic law, namely *rabbāniyyah* (theistic), *akhlāqiyyah* (ethical), *waqi'iyyah* (realistic), *insāniyyah* (humanistic), *tanāsuq* (in order), and *shumūl* (comprehensive).⁵⁹

When linked with the concept of Qardhawi's *al-maṣlahah*, or more precisely *fiqh al-maqāṣid*, *fiqh al-awlawiyyāt*, and *fiqh al-muwāzanah*, there are at least three basic things that need to be a point of emphasis. First, the struggle to formally enforce Islamic law that must depart from consistency in realising the objectives of *sharī'ah* (*maqāṣid al-sharī'ah*) which have a benefit dimension. Second, the struggle for the enforcement of Islamic law must be able to sort out which ones should be prioritised and which should be postponed. Third, the struggle for the enforcement of Islamic law must be able to consider the size of the benefit and damage of every case related to Islamic law, so that in carrying out a case for the sake of benefit, you have to sacrifice energy by the occurrence of greater and wider damage. One must also consider the quality of the importance, which is *darūriyyāt*, which is *hājiiyyāt*, and which is *taḥsīniyyāt*. In this case, the benefit of the enforcement of Islamic law in Indonesia, in the perspective of *fiqh al-maqāṣid*, must be able to see and understand simultaneously the formal aspects of *sharī'ah* and the substance or purpose of *sharī'ah* (*maqāṣid al-sharī'ah*). The perspective of *fiqh al-maqāṣid* is based on

⁵⁸ It is based on two principles, *al-wasathiyyah* (moderation) and *al-waqi'iyyah* (based on reality). The principle of *al-wasathiyyah* emphasises that Islamic *ummah* is urged to harmonise between the formal and substantial aspects of Islamic law. See Yusuf Qardhawi, *Karakteristik Islam: Kajian Analitik* (Surabaya: Risalah Gusti, 1995), 141-175. In addition, the aspect of *al-waqi'iyyah* encourages *ummah* to invent ideal values of *sharī'ah*, but at the same time should deal with the current context of life. See Yusuf Qardhawi, *Karakteristik Islam: Kajian Analitik* (Surabaya: Risalah Gusti, 1995), 177-209.

⁵⁹ See further Yusuf Qardhawi, *Madkhal li Dirāsāt al-Syari'ah*, 87-145.

Qardhawi's view that in every body there must be a substance in law. Every command of Allah, according to Qardhawi, must contain benefit and every prohibition of Allah must contain infidelity.⁶⁰ That is why the struggle to uphold Islamic law in Indonesia should not only emphasise the dimension of obedience. It must also has awareness and knowledge of the substance of benefit and independence. Accordingly, the objectives of *sharī'ah* can be achieved and *sharī'ah* does not become a mere formality. With awareness and knowledge of *maqāṣid al-sharī'ah*, the outward form of law that has been and will be codified can truly realise and touch the substance of the advancement of Islamic law in Indonesia.

Meanwhile, the benefit of the enforcement of Islamic law in Indonesia from the perspective of *fiqh al-awlawiyyāt*, must consider the priority choices that will be taken when faced with various choices. This is where we need to be wise and careful in taking action. Muslims must be able to prioritise interests and goals that are certain over interests or goals which are still in doubt, as well as social interests over individual interests, the interests of the crowd over the interests of the few, sustainable interests over temporary interests, fundamental interests above the importance of formality, and so on. In addition, the benefit of the enforcement of Islamic law in Indonesia from the perspective of *fiqh al-muwāzanah*, must be able to consider the consequences that will be borne when a choice is made. This is where principles such as "rejecting damage must take precedence over taking advantage," become a consideration in upholding Islamic law in Indonesia. For example, eradicating corruption must take precedence over including the Jakarta Charter in the state constitution. Likewise with other principles such as "minor harm may be done to get more significant *maṣlahah*," and so forth.

A valuable lesson from the concept of Qardhawi's *al-maṣlahah* for the enforcement of Islamic law in Indonesia is the necessity of proper pre-conditions before the implementation of Islamic law. For Qardhawi, the enforcement of Islamic law must be realistic. It must adapt to social developments that occur in the state and society. For example, in a magazine in Egypt, once Qardhawi stated that public freedom should take precedence over Islamic law, because according to him, how could Islamic law be enforced under a dictatorship regime?⁶¹ This may lead to a pejorative meaning of *sharī'ah*. *Sharī'ah* can be copied as a despotic system of life. Qardhawi also gave instructions that justice and prosperity must be realised before the implementation

⁶⁰ Yusuf Qardhawi, *Fiqh Prioritas: Urutan Amal yang Terpenting dari yang Terpenting* (Jakarta: Gema Insani Press, 1997), 36.

⁶¹ Eramuslim.com, "Syaiikh Yusuf Qardhawi: Kemerdekaan Publik Diprioritaskan Ketimbang Penerapan Syariat Islam," *Eramuslim.com* Juli 11, 2005.

of Islamic law. For example, the law of cutting off hands may not be enforced if the distribution of zakat is not sufficient.⁶²

Likewise Qardhawi's emphasis on prioritising core and fundamental interests over formal and external interests. This is as he exemplified the Hudaibiyah Agreement where the Prophet Muhammad was willing to replace the sacred word *bismillāh* with *bismika-allāhumma*, and erased the apostolic nature of the Prophet, *Muhammad Rasulallah* which was replaced by *Muhammad ibn Abdullah* to avoid conflict and maintaining peace with non-Muslims.⁶³ This is basically the same as the obligation of Muslims to be willing for this country to use the Pancasila principle and not the Islamic principle, even though the majority of the country's population is Muslim. Likewise, the willingness of Muslims not to impose the inclusion of the Jakarta Charter in the country's constitution.

For this reason, basically the main Qardhawi's principle in upholding Islamic law is that every Muslim, as well as a country with a Muslim majority, must strive so that Allah's law can be upheld. This means that the *sharī'ah* must be the basis for establishing the foundation of the state and government system, in any situation.⁶⁴ However, this struggle is not something short and premature and not based on deliberation, but a long-term, gradual struggle through a continuous process of dialogue.⁶⁵ This means that the Islamic law should not be formalised, but the objectives of the *sharī'ah* are neglected. It is better if the Islamic law is formally suspended and further striven for so as not to neglect the objectives of the *sharī'ah*.

Thus, in a country where the majority of the population is Muslim like Indonesia, when Islamic law has not been fully realised (*kāffah* and *shumūl*), there must be several paths that need to be taken. In such a situation according to Qardhawi, Muslims need to get out of the basic law with a number of considerations from the *sharī'ah*.⁶⁶ Among these considerations, first, minimising crime and injustice according to ability.⁶⁷ Anyone who can do it the way he can, he must do it. Muslims must help the oppressed, help those who are wronged, strengthen the weak, and narrow the area of sin and evil. This is in accordance with the argument in the Qur'an surah al-

⁶² Yusuf Qardhawi, *Madkhal li Dirásat al-Syari'ah*, 283.

⁶³ Yusuf Qardhawi, *Fiqih Prioritas*, 36.

⁶⁴ Yusuf Qardhawi, *Fiqih Daulah*, 258.

⁶⁵ Yusuf Qardhawi, *Fiqih Daulah*, 259.

⁶⁶ Yusuf Qardhawi, *Fiqih Daulah*, 253.

⁶⁷ Yusuf Qardhawi, *Fiqih Daulah*, 253-254.

Taghabun [64]: 16 which means, "Then fear Allah according to your ability," and the hadith of the Prophet, "If I command you with an order, then carry out the action. order it according to your ability." (*Muttafaq Alaih*).

Second, do the least harm.⁶⁸ This is based on a rule justified by the *sharī'ah*, namely to do the most minor harm to get rid of the greater harm, or to leave the lowest benefit to get the highest benefit. Therefore, the jurisprudence experts allow the silence of crimes which, when resisted, will lead to greater evil. It is almost the same as the prohibition against a leader who makes mistakes if the resistance will lead to greater harm.

Third, let go of the highest value and then come down to the lowest reality.⁶⁹ Even though it is well aware that in Islamic law there are noble values that are ideal, practical life often trumps these noble values. So that Muslims cannot achieve it and are forced to let it go and move on to other actions. This can happen because of the pressure of compulsion and looking for the easiest possibility, while to move up to a higher value is difficult to do. This is in accordance with the rules in the basics of *sharī'ah*, namely, "A state that forces what is prohibited to be permitted."⁷⁰

Fourth, perform phases in accordance with the principle of graduation in Islamic law.⁷¹ This means that gradually the enforcement of Islamic law starts from the easy things, the small things, the things that are closest to us, and so on. It must be realised that often humans cannot achieve great goals at once, although they are very eager to achieve them. Yet, it is possible for him to reach out by easy stages, according to his abilities and conditions. This means that if one does not get everything, it does not mean leaving everything just like that.

In spite of the fact that Indonesia has not been able to enforce Islamic law in a *kaffah* and *shumūl* manner, it does not mean that Muslims in the country cannot bring it to conform to the principles contained in *al-daulah al-shar'iyyah al-dustūriyyah* as emphasized by Yusuf Qardhawi, namely a country based on deliberation, a country that protects the weak, a country that protects rights and freedoms, and a country that has principles and morals.⁷² This is where the core idea of Qardawi which seeks

⁶⁸ Yusuf Qardhawi, *Fiqih Daulah*, 254-255.

⁶⁹ Yusuf Qardhawi, *Fiqih Daulah*, 255-258.

⁷⁰ Zainuddīn bin Ibrāhīm bin Muhammad bin Bakar, *Al-Ashbāh wa al-Nazāir: 'ala Madhab Abī Ḥanīfah al-Nu'mān* (Beirut: Dār al-Kutub al-'Ilmiyah, 1999), 73.

⁷¹ Yusuf Qardhawi, *Fiqih Daulah*, 258-259.

⁷² Yusuf Qardhawi, *Fiqih Daulah*, 46-78.

to moderate Islamic sharia based on the principles of *al-maṣlahah* by suggesting that the formalisation and substantialisation of *sharī'ah* be carried out simultaneously in stages and continuously to achieve the establishment of a totality and comprehensive Islamic law.

Conclusion

This article discusses the concept of *al-daulah al-shar'iyyah al-dustūriyyah* in Yusuf Qardhawi's perspective and its relevance to the Indonesian state. The purpose of this article is to bridge and at the same time provide alternative solutions to the idea of implementing *sharī'ah* and the Islamic state that the Islamic populist group has reiterated in the last five years. Therefore this article poses two questions, namely how the principles of an Islamic state in the perspective of Yusuf Qardhawi and their relevance and implementation in the Indonesian state.

Yusuf Qardhawi stated that there are four principles in *al-daulah al-shar'iyyah al-dustūriyyah*: a state based on deliberation, a state that protects the weak, a state that guarantees rights and freedoms and a nation that has principles and morals. Meanwhile, in the issue of formalisation of *sharī'ah* in Indonesia, it is carried out without negating and still considering the substantial-universal values that exist in shariah.

This article argues that the Indonesian state which adheres to a democratic system and is based on Pancasila does not contradict the principles of an Islamic state or the principles of *al-daulah al-shar'iyyah al-dustūriyyah* from the perspective of Yusuf Qardhawi. Indonesia, as one of the countries with a majority of Muslims, does not seem to need to apply *sharī'ah* formally. Yet, *sharī'ah* is still implemented as a living law in society and continues to struggle for substantial-universal values that exist within *sharī'ah*. Thus, in the matter of nation and state in the midst of the plurality of Indonesia, a *maqāṣid al-sharī'ah* approach is needed which is always oriented towards the general benefit that is not limited to certain ethnicities, races, groups and religions. Thus, that is a general benefit that can be accepted by all mankind can be achieved.

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