

The Implementation of Deliberation as a Form of Collective Decision in Islamic Law

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Abstract. *Deliberation is one of the main principles in Islamic teachings that functions as a means to achieve fair and wise collective decisions. In Islamic law, deliberation plays an important role in the decision-making process, both in the political, social, and legal realms. This study aims to examine in depth the concept of deliberation based on the arguments of the Qur'an and Hadith, and its application in the formation of Islamic law (sharia). Through a normative approach and analysis of classical and contemporary literature, this study highlights the importance of deliberation as a mechanism to ensure the participation of the people in the legislative process. In addition, this study also explores how collective decisions taken through deliberation are able to reflect justice, equality, and mutual agreement, in accordance with Islamic values. The findings of this study indicate that deliberation is not only relevant in the context of traditional Islamic law, but also has strong significance in modern legal and governance systems, especially in efforts to promote transparency and accountability.*

Keywords: *Islamic Law, Collective Decision, Justice, Deliberation*

Received: November 10, 2024

Received in Revised: November 23, 2024

Accepted: December 24, 2024

INTRODUCTION

Deliberation is one of the things that cannot be separated from social life, as well as national and state life. In living our lives, we cannot be separated from the existence of a problem, because problems are part of life. Every problem must have a solution, because Allah SWT will not test His servants beyond their abilities (Mubarak, 2019). As the word of Allah SWT in QS. Al-Insyirah verse 6 explains that "indeed after that difficulty there is ease".

The view of deliberation or shura can be interpreted as a form of giving advice (opinions) and exchanging opinions. Deliberation begins with someone asking for someone else's opinion on a problem. This opinion is only a consideration in determining policies and making decisions (Sucilawati, 2020). So there is no obligation to accept the advice given. Before the arrival of Islam, the Arabs had known deliberation to solve the problems they faced. Even deliberation has been used as a tool in choosing their tribal chiefs (Waro, 2019).

In the context of Islamic law, deliberation is one of the main mechanisms for reaching agreement in the implementation of sharia. This process ensures that every legal decision taken involves various perspectives and considers the interests of the community collectively (Hidayat & Suwanto, 2020). This is very important in maintaining justice and diversity of opinion in Muslim society. In the present day, deliberation remains relevant, especially in facing modern challenges that require the adaptation of Islamic values to a more complex legal context. However, the application of deliberation in Islamic legal decision-making still faces challenges, especially in the

context of globalization which often demands time efficiency and the need to make quick decisions in the legislative process. And there are still practices of injustice, both at the government, community and around us. Therefore, it is important to conduct an in-depth study of how deliberation can continue to play a significant role in the formation of Islamic law, especially in the contemporary legal and government systems. This study aims to further explain the importance of deliberation as a form of collective decision-making in Islamic law and how this principle can be applied effectively in modern society.

METHODS

This study uses a qualitative approach with descriptive and interpretative analysis methods to understand the concept of deliberation in Islamic law. This study focuses on literature studies and text analysis of relevant primary and secondary sources, such as the Qur'an, Hadith, and the latest scientific books and articles related to deliberation and Islamic law. This approach aims to identify the principles of deliberation in Islamic law and explore how the concept is applied in the context of modern law. Data collected from various sources are analyzed using a deductive method, namely drawing conclusions based on general principles applied in more specific situations.

The data are analyzed through a thematic approach, where key concepts in deliberation, such as shura and community participation are identified and evaluated. The analysis process also involves a comparison between traditional theories and applications in a modern context, considering how globalization affects the implementation of deliberation. Validation is carried out by comparing the results of this study with various relevant previous studies. The use of trusted sources, including indexed scientific articles and books by experts in the field of Islamic law, ensures that the results of the study have a high level of validity.

RESULTS AND DISCUSSION

Deliberation

Deliberation or shura in Islamic law acts as a mechanism to reach fair and inclusive decisions. According to Imam Shahid Hasan Al-Banna, Shura is a process of seeking decisions and agreements based on the majority vote and based on the Qur'an and as-Sunnah, and submitting all matters to experts in order to achieve a satisfactory result. This result is maximized in order to maintain harmony between the leader (government) and the people (Karim, 2019). Deliberation explains an existing matter, states or conveys an opinion and finally a decision is made. In other words, it can also be said that deliberation is an exchange of opinions that ultimately produces an idea that culminates in a joint decision through deliberation (Firdaus, 2019).

This principle reflects democratic values that emphasize collective participation, transparency, and social justice. In practice, deliberation provides space for stakeholders to voice their views, enabling a more democratic and collaborative decision-making process. According to Quraish Shihab, deliberation, taken from the root word syawara, means 'removing honey from its nest'. In line with the basic meaning of honey for medicine. Honey is produced by bees. So, deliberation should be like bees which are very disciplined creatures, the cooperation is extraordinary, wherever it lands it will never break, it will not disturb unless disturbed (Faruqi, 2019). This is important in the implementation of dynamic sharia, especially in dealing with contemporary problems such as politics, gender, and the environment (Mårtensson, 2019).

Recent studies have confirmed that deliberation has a strong significance in creating a legal order that is sustainable and responsive to social and political changes. For example, in the context of modern Islamic law, deliberation is used as a basis for forming policies that reflect the public interest and Islamic values, as is the case in the context of contemporary Muslim countries (Zamharir et al., 2019). Furthermore, recent studies highlight the challenges of globalization, such as the acceleration of decision-making, which affects the effectiveness of deliberation. Therefore, adaptation is needed so that the principle of deliberation remains relevant and applicable in the

modern context (Rambe & Mayasari, 2021). There are three verses in the Qur'an that contain the principle of deliberation in making a decision based on the verses of the Qur'an. Although the three verses have different backgrounds, especially QS. Asy-Shura ayat 38, QS. Ali Imran ayat 159 and QS. Al-Baqarah ayat 233.

The first verse explains the characteristics of believers, namely that they accept (obey) the commands of their Lord, establish prayer, and pay zakat, and in settling their affairs, they decide by deliberation. The second verse explains that problems among Muslims are resolved by deliberation. And the third verse explains that the breastfeeding period is two years, if a husband and wife want to wean their child on the basis of mutual consent and deliberation, with the intention of benefiting the child, then they agree to stop breastfeeding or wean it before the two-year period, then it is permissible. With the mobility and global migration of Muslim communities. The culture of deliberation has played a role in enriching existing deliberation practices and at a higher level, contributing to the formation of more democratic practices (Hartono & Nurhalim, 2019). This is especially true in many segments of Indonesian society that have produced a more Islamic worldview, in part due to the peaceful penetration of "Islamization" throughout the Indonesian archipelago.

Collective Decision

Decision making in everyday life requires complex information integration. Decision makers must integrate semantic knowledge under current goals, understand the situation, qualitatively evaluate various behavioral options, and choose the optimal option. Collective decision-making models (hereinafter we will call them "decision models") consider the initial individual choices of actors. Then, the model includes a procedure (usually based on social influence) through which these initial choices can change, resulting in the final decisions of the actors. Finally, the global decision of the system is determined through a collective decision function that applies some voting rule (e.g., simple majority) to the final decisions of the actors (Molinero & Riquelme, 2021). When searching for the correct answer, one might solicit information from a number of people and take a statistical average of the responses in the belief that the average will be closest to the truth. This kind of information gathering and evaluation works well for information and decisions that have definite answers based on estimates and facts (Smeulders et al., 2019). One can obtain information, discuss ideas, and develop choices and decisions cooperatively in a group. The approach (one variation of which is brainstorming) is intended to take the best ideas and perspectives and combine them into an optimal solution. This is the way of generating ideas that seems to be most preferred in modern organizations, as it implies a contemporary democratic orientation towards the best knowledge in the group, the aggregation of the best partial knowledge towards more complete knowledge, and the availability of critical review to eliminate bad ideas and develop good ones (Hamada et al., 2020).

Islamic Law

The purpose of Islamic law in theoretical terms is maqashid al-sharia. The main purpose of Islamic law is for the welfare of humanity. The concept of maqashid al-sharia has begun since the time of Al-Juwaini who is famous as Imam Haramain and by Imam al-Ghazali then systematically compiled by an expert in ushul fiqh from the Maliki school of thought from Granada (Spain), namely Imam al-Syatibi (d. 790 H). The concept was written in his famous book al-Muwwafaqat (Nurdin et al., 2022). Islamic law (sharia) according to the Qur'an and literature does not mention the word Islamic law as one of the terms. But in the Qur'an there are the words sharia, fiqh, Allah's law, and those with the same roots. Islamic law is applied at various levels in around 40 countries. Economists acknowledge that religious rules or customs can significantly influence individual or collective behavior (Alfano, 2022).

The term Islamic law is a translation of Islamic law in Western literature (Mardani, 2015). To provide more clarity about the meaning of Islamic law, it is necessary to first know the meaning of each word. The word law etymologically comes from the Arabic root word, namely hakama-yahkumu, then the word alhikmah appears which means wisdom. This means that

people who understand the law and then practice it in their daily lives are considered wise people. Furthermore, Islam comes from the word *salima-yaslamusalaman-wa salmatan* which means safe (from danger), and free (from defects) (Annisa, 2020).

The principle is the beginning, the place of departure, the starting point, or *al-mabda'*. The principles of Islamic law are as follows (Rohidin, 2016).

Tawhid

This principle states that all humans are under the same decree, namely the decree of monotheism which is stipulated in the sentence *la ilaha illa Allah* (There is no god but Allah). The Qur'an provides clear provisions regarding the principle of equality of monotheism between all of His people. Based on this principle of monotheism, the implementation of Islamic law is worship. Worship in the sense of human servanthood and surrender to Allah as a manifestation of recognition of His omnipotence and a manifestation of gratitude to Him. The principle of monotheism provides a logical consequence that humans must not deify each other, humans or other creatures. The implementation of Islamic law is a process of human servanthood, worship and submission to God's will. The consequence of this principle of monotheism requires every human being to establish laws according to the provisions of Allah (Al-Qur'an and Sunnah).

Justice (Al-'Adl)

Justice that must be upheld includes justice towards oneself, individuals, legal justice, social justice and world justice. Justice in Islamic law covers various aspects of life; human relationship with God; relationship with oneself; human relations with fellow humans (society); and human relations with the surrounding environment. Until finally from this just attitude a human being can obtain the predicate of piety from Allah.

Preventing Crime

In Islamic legal philosophy, the term *amar makruf* is known as a social engineering function, while *nahi munkar* as social control in the life of law enforcement. Based on This principle is known in Islamic law as the term commands and prohibitions.

Equality or Egalitarianism (Almusawah)

Humans are noble creatures. Human glory is not due to race or skin color. Human glory is due to human substance itself. So the Prophet made it clear in his words which means "Everyone comes from Adam. Adam came from the earth. There are no privileges between Arabs and non-Arabs except for their piety." So that before God or before law enforcers, everyone has the right to receive equal treatment, because Islam recognizes the principle of equality (*egalite*).

Helping (At-Ta'awun)

Ta'awun, which comes from the root word *ta'awana-yata'awanu* or usually translated as an attitude of helping each other, is one of the principles in Islamic law. This assistance is directed in accordance with the principle of monotheism, especially in efforts to increase goodness and devotion to Allah.

Justice

Justice is a broad concept consisting of various dimensions. One dimension addresses the preferences and behavior of individuals who are prepared to respect others, treat them fairly, and not harm them (Sovacool et al., 2023). The word justice is the word most frequently mentioned in the Qur'an (more than a thousand times) after the words of Allah and science. Therefore, in Islam justice is the starting point, as well as the process and goal of all human actions. In the Qur'an it is clearly stated that believers are obliged to uphold justice. As Allah SWT says in QS. An-Nisa [4] verse 135 and QS. Al-Maidah [5] verse 8.

The first verse explains that upholding justice is the obligation of believers. If you are a witness, you are required to be as fair and honest as possible and you are prohibited from

following your desires and perverting the truth. Meanwhile, the second verse explains the command to believers to be human beings who are just because of Allah, to be just because being fair is closer to piety and to be witnesses who are just and devoted to Allah.

CONCLUSION

Consultation, as one of the main principles of Islamic law, remains relevant in the modern context despite the challenges of social change and globalization. As a form of collective decision-making, consultation not only reflects the democratic values of Islam, but also serves as an important means to achieve justice and inclusiveness in the Islamic legal system. Consultation can serve as a bridge between the Islamic legal tradition and the challenges of globalization, providing space for more inclusive dialogue and participation. Although consultation faces challenges, especially in terms of efficiency and speed of decision-making, its basic principles can still be applied in the modern context. The use of digital technology, for example, can help broaden participation and speed up the consultation process without sacrificing the quality of discussion and decision-making.

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