

Concept of State and Law in the Perspective of Islamic Legal Philosophy

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Abstract

The concept of state and law is the foundation for development in the welfare of its people in a country. It is in which the people's desires and hopes are balanced in prosperity and justice in the life of society, the state and at the same time the nation. Legal philosophy in this case can direct and accommodate legal needs with the level of development progress in all aspects broadly. Furthermore, to control the state, you must also understand the true meaning of the law in its purest sense, and vice versa, without the law, a group of people will certainly be swayed, and the community/people will certainly not be disciplined. Social problems in general are a dualism between law and the state, although in the traditional legal view, the state is different from the law, but basically, the state has a legal character. This article aims to examine the concepts of state and law based on the perspective of Islamic legal philosophy. The country is the place where the people in that region live.

Keywords: state, law, philosophy, Islamic law

Introduction:

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To master the intricacies of governing a nation, one must have a profound understanding of its laws, as the state and its legal framework are inseparable. Consequently, four foundational pillars underpin the life of the nation and the state, each rooted in a strong philosophical basis. This presentation will delve into the philosophical dimensions of the first pillar, the Unitary State of the Republic of Indonesia, exploring its significance and the principles that sustain it. The study of the state and law ideally from the perspective of Islamic legal philosophy by referring to several views of Muslim philosophers will be a study in this presentation with the theme “State and Law in the Perspective of Islamic Legal Philosophy” and National Problems, this study becomes relevant to answer the challenges of the world of philosophical scholarship so that able to be grounded ²and able to provide solutions to social and national problems themselves.

The forerunner of the archipelago and strong national ties has existed since the era of kingdoms in the archipelago with its golden peak during the Majapahit kingdom which was able to unite the archipelago in the 14th century. In the subsequent history, the birth of the term Indonesian nation was inseparable from the youth oath event in 1928. The main content emphasizes one nation, one language and one homeland, namely “Indonesia.” Meanwhile, the birth of the independent Unitary State of the Republic of Indonesia (NKRI) began with the Proclamation of Independence of the Republic of Indonesia which was proclaimed by President Ir. Sukarno and Vice President Mohammad Hatta on August 17 1945.

The purpose of the existence of the Indonesian State cannot be separated from the thoughts of the founding fathers of this nation as stated in the preamble to the 1945 Constitution of the Republic of Indonesia, by protecting and prospering the people (Indonesia, 2002). Next, this article aims to study and understand the concept of the State and law from the perspective of Islamic Law philosophy, so and will add innovation and insight related to the State and the state from the perspective of Islamic legal philosophy.

Understanding State and Law:

Talking about the “State” appeared several centuries before Christ, when the study of the state was studied in State Science. Greek thinkers such as Socrates, Plato and Aristotle taught theories about the state. However, the understanding and meaning of the state at that time were not the same as the understanding and meaning of the state that is developing today, because what was called a state at that time only covered a small neighbourhood or city-state called a “polis”, such as including families and villages (Huda, 2010).

The term state is a translation from foreign languages such as Dutch and German, namely “Staat”, in English “State”, then in French “Etat”. These foreign words were transferred from the Latin word “Status or Statum”. Before the 15th century, the words “civitas or res Publica” were used, especially by the Romans. Then, in the 5th century, the word “Lo Stato” from Italian was used in reports by representatives of the Italian alliance. According to experts, Machiavelli was the first to introduce the term “Lo Stato” in political science literature. However, Kranenbrug states that “Lo Stato” is a term that is appropriate to denote the territorial state that emerged in the 17th century as a term that indicates the function of all the public organs that are neatly arranged inhabiting a certain area (Rahmad and Halimi, 1996), on the other hand, the natural state (Sarifuddin & Joesoef, 2023).

² down to earth

This description shows that the term state has undergone quite a long development, and then raises the question, what is meant by state? To answer this question, it turns out that experts have expressed different views regarding the meaning of state. The difference in views is because these experts view and focus attention on the state on different aspects, for example, Hegel views the state as an organization of morality, Logemann views the state as an organization of power, and MacIver views the state as a political organization. Apart from that, G. Jellinek is considered the father of State Science with two aspects, namely the social aspect and the juridical aspect. Then Kelsen (2019) looked at the country from only one aspect, namely the legal aspect. Oppenheimer reviewed the state as a sociological concept, and even Nawiasky reviewed the state as an idea, social reality, and a legal meaning (Anshar, 2019), based on law.

However, as a guide and guide to understanding the meaning and meaning of the country (Pratiwi et al., 2024), it can be seen in the table below:

Table 1: Meaning of a State

S No.	Name of expert	The Theory Related To The State
1.	Aristoteles	The state ³ is an association of families and villages to obtain the best possible life.
2.	Hans Kelsen	A state is an arrangement of social groups living together with a forced system.
3.	Max Weber	The state is a society that has a monopoly on the legal use of physical violence in a territory.
4.	Hugo Gratius	The state is a perfect association of free people to obtain legal protection.

So, in essence, the state is an organization of sovereign power which, through governance, carries out rules and regulations over a people in a certain area concerning its form and style. The state is always an organization of power. So the power organization always has a governance system, and this governance system always implements order for the people in a particular area. Furthermore, regarding the definition of law which can be used as a guide and guide, so that we understand what law is, the following is stated by legal scholars, including those mentioned in Table 2 (ibid.) below:

Table 2: Definition of Law

S No.	Name of expert	The Theory Related To The State
1.	E.Utrecht	Law is a collection of life instructions ⁴ which regulate order in society, and are then obeyed by the members of that society, by law violations of these life instructions can give rise to action from the government of that society.
2.	Immanuel Kant	Law is the totality of the conditions by which the free will of one person can be adjusted to the free will of another person, according to the principle of freedom.
3.	Satjipto Raharjo	Law is a human work in the form of norms containing behavioural instructions. It is a reflection of human will regarding how society should be developed and where it should be directed. Therefore, first of all, the law contains a record of the ideas chosen by the society where the law was created. These ideas are ideas about justice.
4.	Leon Duguit	Law is a rule of behaviour for members of society, a rule whose use at a certain time is heeded by society as a guarantee of common interests and if violated, it creates a collective reaction against the person who commits the violation

³ polis

⁴ commands or prohibitions

Based on the definition of “law” put forward by these scholars, “law” has the elements and characteristics of law, as well as the objectives of law (Sugiarto, 2013). The elements and characteristics of “law” can be described in the following scheme:

- i. Regulations regarding human behaviour;
- ii. The regulations are implemented by an official body;
- iii. The regulations are coercive;
- iv. Sanctions for violations are firm;⁵
- v. Regulations are a network of values, abstract conceptions about fairness or injustice and what is considered good and bad.

Understanding Philosophy, Legal Philosophy, and Islamic Legal Philosophy:

Philosophy is thinking deeply about the nature of truth that exists or may exist. Legal philosophy is a branch of philosophical science that discusses the nature of law, and the aims and objectives of law. On the other hand, Hart believes that legal philosophy is a work of thought together with moral, political and linguistic philosophy, and law as the result of the work of moral philosophy. Islamic legal philosophy is a new science that was born long after the establishment of other Islamic sciences, known as value (Harefa, 2016). It seems that so far the Islamic ummah does not need the philosophy of Islamic law, because the essence of Islamic law is contained in the definition which means “Order of Allah relating to the actions of the *mukallaf*.”

Khithaabu means communication, so the essence in Islam is God’s communication, meaning two-way conversation that comes from God to humans. The results of understanding the content of the communication are formed into a formulation, and so on (Ilham, 2020)

Analysis and Findings:

- i. **Concepts of State and Law from the Perspective of Islamic Legal Philosophy:**
The state is a very large organization which includes at least three elements, namely the existence of territory, the existence of the people, and the existence of the government, which is none other than that it must have power so that it can rule in the country, then there must also be laws that regulate it, as a legal system⁶ (Kelsen, 2019), the other side of the country has a legal character.

The concept of ordinary thinking and the concept of thinking philosophically are very different, the meaning of thinking philosophically is very deep to its roots so that it can be interpreted in essence. This means that the knowledge possessed by humans in general is usually “ordinary knowledge” and is very different from the knowledge possessed philosophically. The difference between ordinary knowledge and philosophical knowledge can be seen in table 3 below:

⁵ certain and can be felt by the person concerned

⁶ the legal order

Table 3: Difference between Ordinary Knowledge and Philosophical Knowledge⁷

S No.	Aspect	Ordinary Knowledge	Philosophical Knowledge
1.	Study Area	Everything that “is” or “might be” according to their field of expertise	Everything that “is” or “might be” in all fields
2.	Source or Method	Empirical in nature/empirical research	Reason or speculation
3.	Objective	The meaning of “ordinary” truth is the conformity of knowledge with empirical reality related to falsification and verification based on reality.	Deep courage (postulate) is immune to falsification and verification based on logical verification.

Based on Table 3, it can be understood that the deepening of a person’s mastery is very different from ordinary knowledge to philosophical knowledge. The meaning of truth that is generally understood is very different, depending on the level of understanding that a person has to know that truth, for example by looking back at the results of understanding that are formed into a formula, that someone will obey orders, but on the other hand, sometimes some disobey/disobedient/disloyal, please see table 3 below

Table 4: Comparison between Legal Thought Traditions in Islam and Christianity⁸

S No.	Aspect	Islam	Christian
1.	The Nature of Law	God’s Law	God’s law “reason”
2.	Source of law	Revelation, Morals and Laws	Revelations, morals,
3.	Supreme Legal Authority	Revelation	The sense of “rule”
4.	Balance Level	Law Leads the Times	Sense
5.	Legal Character	Worldly religion	Laws Keep Up with the Times
6.	Function of Reason	Devoted to Revelation	Leaving the worldly without the worldly

In Islamic law, the aim of law in Islam is the theory of Maqasid al Syariah, meaning that the aim of Islamic law is prescribed, therefore the main limitation in it is the wisdom and illat of enacting a law. An interesting study related to the enactment of law is the field of fiqh, and the next development is the philosophy of Islamic law (Djamil, 1999), which will lead to a path to human salvation (Fuad, 2013).

- ii. **Views of Muslim Philosophers on the State:** In the study of Islamic philosophy, several Muslim philosophers are concerned with this field. Regarding the ideal function of the state, the thoughts of several Muslim philosophers have their views, including Al Farabi and Mulla Sadra. Al Farabi, apart from being a Muslim philosopher and having produced great works, also keeps himself busy participating in managing the state and the world of politics, requiring logical thinking and the logic of language (Rahma, 2022).

In this matter of state philosophy, al-Farabi’s philosophy is more directed towards the philosophy of Plato and Aristotle. Al-Farabi believes that humans are social creatures, creatures who have a natural tendency to socialize. This is because

humans are unable to fulfil all their own needs without help or cooperation with other parties. He stated that the aim of society is not only to fulfil basic needs but also to produce the completeness of life that will be given to humans, namely happiness, both material and spiritual, including the worldly and the hereafter, especially the goal of a Muslim's life.

Farabi stated that a society can be classified into two groups of society (Sulistiani, 2018), A Perfect Society⁹ is a society that contains a balance between its elements. The only difference is that if the elements of society have greater individual freedom, then in humans these elements are more controlled and governed by the centre.

Furthermore, perfect societies are classified into three parts, the first is a large perfect society, namely a combination of several nations that have joined an international cooperation agreement. Then the second group is a medium perfect society, namely those consisting of the people of a nation living in one area, and the third is a small perfect society consisting of residents of one city¹⁰ the other is a Society not yet perfect¹¹ which means a society that is not/imperfect is a society whose life is small, such as a society whose social livelihood is at the village, village, alley/hamlet and family levels. In this case, what is still far from imperfect in society is the family.

In al-Farabi's perspective, the main state is the first category, namely a perfect society,¹² where the total number of its parts is complete, likened to one complete member of the human body. If one of the body's organs hurts, the rest of the body will feel it. Likewise, members of the Main State community, which consists of citizens with different abilities and functions, live by helping each other, or in other words, sharing the same fate and sharing the same responsibility. Each of them should be given work that suits their specialization.

The main function in al-Farabi's political philosophy or government is the function of the head of state which is similar to the function of the heart¹³ in the human body. The head of state is the source of all activities, the source of regulations, brave, strong, intelligent, a lover of knowledge and justice, and has reason and can communicate with the ruler of the earth, and the transmitter of Revelation.

Al-Farabi also believes that the ideal person as Head of State is a Prophet/Apostle or a philosopher. Apart from his duties in governing the State, he is also a teacher and educator for members of the community he leads. If there are no characteristics of an ideal Head of State, the leadership of the State is handed over to someone who has characteristics that are close to the characteristics of an ideal Head of State. If the qualities in question are not found in a person but are found in several people, then the State must be handed over to them and they must collectively unite to lead society.

⁷ al-Mujtami' al-Kamilah

⁸ city state

⁹ al-Mujatami' laisa Kamilah

¹⁰ al-Mujtami' al-Hikmah

¹¹ al-qalb

Conclusion:

This article concludes that the concept of ordinary thinking and the concept of thinking philosophically are very different, the meaning of thinking philosophically is very deep to its roots so that it can be interpreted in essence. This means that the knowledge possessed by humans in general is usually “ordinary knowledge” and is very different from the knowledge possessed philosophically, in fact, it is very profound. Furthermore, Al-Farabi also holds the view that the most ideal person as Head of State is a Prophet/Apostle or philosophical. Apart from his duties in governing the State, he is also a teacher and educator for members of the community he leads. If there are no characteristics of an ideal Head of State, the leadership of the State is handed over to someone who has characteristics that are close to the characteristics of an ideal Head of State. If the qualities in question are not found in a person but are found in several people, then the State must be handed over to them and they must collectively unite to lead society.

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