

The Law of Urgency in Choosing Leaders in The Qur'an According to Al-Mawardi

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ABSTRACT

This article explains the mechanism for selecting government and state leaders according to Abu Hassan al-Mawardi's benefit theory. According to al-Mawardi, Islamic teachings require legal norms that are closely related to political and constitutional issues. Based on the interpretation of QS Ali Imran verse 59, al-Mawardi reconstructs the meaning of Ulil Amri as the political representation of the people in the state power system. According to him, Ulil Amri is a group of selected people from various circles, namely soldiers, ulama, scientists, and so on who have an important key in the political decision-making process. The interesting thing about al-Mawardi's thinking is that he emphasizes the political consensus side (*ijma fi fiqh al-siyasi*) in the process of making political decisions, one of which is used in choosing government and state leaders.

Keywords: Imamah, Al-Fiqih Al-Siyasi, Ulil Amri, Democracy

1. INTRODUCTION

One of the characteristics of the Islamic religion in the early days of its emergence was its success in the political field. The development of Islamic history from the time of the Prophet Muhammad until much later times recorded spectacular success. Islamic empires have succeeded in building the foundation of a new civilization in the world and exerting influence in the field of political power.¹The representation of Islam in life is positioned as more than just teachings containing ideological values, but also instills basic principles in the political and constitutional fields.²

For example, Munawir Sjadzali explained that there are three views regarding the pattern of relations between religion and state in Islam. First, Islam is a religion that is perfect and completely regulates all aspects of human life including constitutional issues. Second, Islam is understood in the Western sense, namely that religion and the state have nothing to do with each other, each is separate from the other. Third, Islam is not regulated in any way. is firm regarding constitutional issues and does not separate the two, however in Islam there is a set of values or basic principles regarding constitutional issues.³

From the above view, one of the interesting objects in the study of Islamic law in the field of politics is to explain al-Mawardi's theory of benefits regarding the mechanism for selecting government and state leaders. The focus of this article is to examine in more depth how al-Mawardi was a great scholar in two eras (the transition from the Umayyad Dynasty to the Abbasid Dynasty)

¹Philip K. Hitti, History of The Arabs (London: Mac Millan. 1974), p. 139.

²Ahmad Syafi'i Ma'arif, Islam and Constitutional Problems (Jakarta: Bulan Bintang. 1993), p. i

³Munawir Sjadzali, Islam and State Administration (Jakarta: UI Press. 1991), p. 1.

whose thoughts succeeded in representing brilliant ideas for the treasures of Islamic political thought, namely the benefits of *fi ushul al-siyasi* [1].

Islamic Political Thought and Democratic Ideas

To narrow the problem, in writing the connotation of Islamic political leadership is interpreted in two terms, namely "government" and "state". Government is a form of power system for state administrators, while the state is the largest system which includes government organs. On that basis, here we differentiate the meaning between state institutions and government institutions and political leadership in Islam. As an illustration, state institutions are the largest component in the state system as is also known in Western thought, namely Montesquie's "Trias politica" which divides into legislative, executive and judicial institutions. Meanwhile, government institutions can be illustrated by the form of government, namely presidential and parliamentary. Presidential means that the head of state and head of government are held by one person, namely the President, while parliamentary is made separately, namely that the head of state can be held by the President/Sultan/King, while the head of government is held by the Prime Minister [2].

Islamic law is based on the Koran, the Sunnah of the Prophet and Ijtihad 'Ulama (in the form of Ijma' and Qiyas) based on the two previous sources explaining the basic principles of Islamic politics and state administration. The concept of government and state initiated by most scholars such as Al-Mawardi, Ibnu Khaldun, and Ibnu Taimiyah relies on the source of power being Allah SWT, while humans act as caliphs on earth, so that human power is in the responsibility to fulfill His will. In this context, a response emerged regarding the political theology of Islam versus democracy. It is assumed that Islamic political theology places Allah as absolute power, but in practice this understanding is often "biased" because de facto almost all Muslim countries place the Caliph, Sultan and Amir as political rulers and also holders of legal authority [3].

According to them, QS 4:59 is the basis for an attitude of submission, obedience and obedience to the authorities (*ulil amri*) based on the authorities' obedience to God's law. He stated that *ulil amri* consists of *ulama* whose function is to interpret sharia law and formulate provisions of justice, and *umara* who are tasked with upholding the enactment of Allah's law and defending the Islamic state. Therefore, state sovereignty and people's sovereignty are subject to the supremacy of conditions (God's legal sovereignty). In Islam, the power of the majority can be limited, so that popular sovereignty means the people's right to supervise government to always remain within the limits outlined by the Shari'ah [4].

Citing the views of Ibn Taymiyah and Yusuf Oardhawi, it has shown more firmly that the Islamic State is not a theocracy (*Daulah Diniyah*). The Islamic *Daulah* is a *Madaniyah Daulah* (civil state) that rules in the name of Islam, based on the process of allegiance and *shura*' selecting leaders who are strong (*qawiy*), trustworthy (*amin*), reliable (*hafidz*) and knowledgeable (*'alim*). He differentiates between theocracy and nomocracy, by showing an Islamic state as a nomocracy based on sharia (*daulah syar'iyah dusturiyah*).⁴

The relevance of this is to the concept of democracy built in the Western world that power should be built based on the majority vote (one man one vote). Even though, at first glance, this is similar to building a political agreement such as "consensus", but at the level of the aims and

⁴Ibn Taimuyah, *Styasah alSyar'tyyah fi alIshlah al-Ra'iy wa al-Ra'inyat* (Beirut: Dar al-Kitab al-Arabiyyat 1966) p. 13138-139.

objectives of Sharia law, this cannot be equated with "ijma". However, we often fall into the trap of understanding that consensus in politics is equivalent to ijma fi al-syar'i even though the two have different substances.

Apart from that, the basic principle that is often held is submission to positive law rather than the moral laws of the Shari'ah. In practice, in early Islamic history, the basic political principles between ijma fi al-siyasi and ijma fi ad-dauly were of course two things that were slightly different but not separate. This, for example, inspires and implements the principles of a modern Islamic legal state which guarantees the principles of justice, equality before the law and the courts, the principle of presumption of innocence, and legal principles in actions that appear to be demonstrated in the political and political areas. constitutional.⁵

The people of Medina, who are the reference for the concept of an Islamic state, have a political idea called shura' (deliberation), namely an open space where anyone has the right to express their opinion in an area where the Shari'ah does not strictly limit it (for example, the mu'amalah area). Shura' exceeds democracy in terms of the availability of sharia which limits majority rule which allows the growth of authoritarianism under the guise of democracy.

In the context of milah, the concept of shura' is very relevant to democracy, especially in the aspects of substance, spirit of opposition to tyranny, and the principle of the majority. Through the concept of shura, the state in Islam must open up space for interaction for society as part and mechanism of political control and participation as part of worship and amar ma'ruf nahi munkar. In this political aspect, the sociologist of religion, Robert N. Belilah, stated that Islam feels unique compared to other religions not only because it does not separate politics and religion, but because one of them is that it is "very modern" in its views and practices of state politics, especially in Khulafa Al-Rasyidin period [5].

The state in its relationship with society has a great responsibility including the responsibility to protect the mastadh'afin, workers who are not paid well, women and oppression, children until they are independent, and the elderly. The state is also responsible for distributing prosperity through instruments such as zakat, sadaqah and baitul maal, as well as through an economic system without usury and protecting consumer rights. With this, the state forms social solidarity and upholds justice in its society, where society strongly supports the state to carry out its ethical duties of upholding God's law on earth [6].

The pattern of state-society interaction in Islam shows the inseparable unity between state and society and shows that the two entities are interchangeable. When referring to Culla's categorization, he approaches a second perspective which more easily explains the integrative relations of modern civil society countries. Civil society with the characteristics described above has proven to be a society par excellence that is 'too advanced' for its time. At least, according to al-Jawi, protecting him and changing the term civil society to civil society tends to be considered anachronistic. However, in simple terms, that is the description of the 'Islamic society' desired by Al-Mawardi, Ibnu Khaldun, Ibnu Taymiyah, Ali Abdul Raziq, etc.

2. LITERATURE REVIEW

2.1 *Determining Leader Criteria Through Al-Mawardi's Benefit Theory*

⁵Imran Rosyadi, "Transformation of Civil Society" in <http://www.kammi.or.id/seephp?d-materi&do-view&id-144>.

The leadership criteria referred to in this article are the conditions inherent in prospective leaders. The prospective leaders in question are prospective leaders of government institutions and state institutions. According to al-Mawardi, one of the conditions attached to a candidate is that they must be physically healthy. Apart from all that, how does jurisprudence actually view the physical health of a leader? The normative answer is al-Mawardi's view in *al-Ahkam al-Sulthaniyyah wa a-Walayah al-Diniyyah*⁶ However, how do post-al-Mawardi ulama respond to these requirements?

Al-Mawardi's views in *al-Ahkam al-Sulthaniyyah wa al Walayah al-Diniyyah* are an important reference in matters of constitutional law and leadership in Islam. This is understandable, because there is no book that is as complete and detailed as this book when it comes to discussing the constitutional system in Islam. Al-Mawardi wrote that the requirements for a leader are to be fair, have *ijtihad* competence, be perfect and healthy with the five senses, not be physically disabled, have a vision of social benefit, be firm and brave, and have a lineage from the Quraish tribe.⁷

Meanwhile, post-al-Mawardi scholars viewed these requirements as mostly taking this view for granted. The proof is that my professors at al-Azhar University in the course *al-Nudzum al-Islamiyah* (Islamic system of government) adopted al-Mawardi's opinion completely. intact as a blueprint for leadership requirements in Islam. Due to its importance, this course is taught every year in almost all departments, including the faith-philosophy department [7].

But recently criticism has begun to intensify regarding the last requirement, namely having a lineage from the Quraish tribe. Khalil Abdul Karim in *Quraish min al-Qabilah ila a-Dawlah al Markaziyyah* finds one problematic point and general trend in the construct of Arab reasoning, namely the hegemony of the Quraish which has been very visible since pre-Islamic times up to a long period of Islamic history, perhaps up to the present moment. Even Nasr Hamid Abu Zayd found Imam Syafi'i's thoughts to be very political characteristics of the Quraysh. Religious thought was in line with the interests of power at that time, the interests of the Quraish tribe.⁸

If one of the requirements for a leader has begun to be scrutinized sharply, then the other requirements should also be reviewed critically. Moreover, it is suspected that the book written by al-Mawardi is very political, so it is very possible that there are political interests in it [8]. To confirm this opinion, it can be seen from one of al-Mawardi's opinions, that the head of state is appointed or elected by the *ahl al-halli wa al-'aqdi* and the mandate is handed over from the previous head of state. This can also be seen as a political game by the Quraysh to maintain their community as the ruling group, so that the transfer of power is regulated in such a way as to be in their interests.⁹

Then the question is, do the requirements for five-sensory health and no disability have political content? The answer: it could be "yes" and it could also be "no". In fact, a number of Islamic worlds at least still give appreciation to people who are physically imperfect (blind) to occupy strategic positions. In Egypt, Thaha Husein, a Muslim writer and thinker, was once Minister of Education and Culture. Likewise, Abdullah bin Baz, the mufti of the kingdom of Saudi Arabia, also has imperfect senses. Even a number of deans at al-Azhar University are people who cannot see (blind).

⁶Al-Mawardi, *al-Ahkam al-Sulthaniyyah* (Beirut: Dar al-Fikr. tth).

⁷Ibid

⁸Zuhairi Misrawi, "Leader Criteria in a Fiqh Perspective", article excerpt in <http://islamlib.com/id/index.php?page-article&cid565>

⁹Ibid

If so, there is actually a very high appreciation for people whose five senses are imperfect. Even those who occupy strategic positions in various positions make it possible to provide the highest level of dedication. But the problem is, what about the position of head of state? There is a general tendency among fiqh scholars to "confirm" al-Mawardi's view, which states that physical health is a requirement for a head of state. This looks at the reasoning of general "benefit" (maslahat al-'ammah). A head of state is a role model whose words and actions will be used as an example by society.

Therefore, physical perfection is important so that policies and decisions taken reflect the public interest. Here the rule of fiqh that can be used is to avoid bad possibilities that will arise from the imperfection of a leader's five senses (dar al-mafasid muqaddam 'ala jalb al-mashalih). The head of state represents the interests of society at large, therefore, for the greater benefit of society, the physical perfection of a leader is important.¹⁰

If criticized more deeply, there are three important things about the requirements for a head of state, as stated by al-Mawardi, namely: First, regarding the competence and vision of a leader. A head of state, as outlined in fiqh, is someone who is fair and truly has leadership skills. Second, a leader is assumed to be a creator and capable of making decisions that have dimensions of enlightenment and liberation. Therefore, the skills of a head of state must be above average, because he will later become a role model for society. Third, what is no less important is that a leader must have a people's vision and be firm and brave in defending the people's rights so that he provides benefits to the people. This is relevant to the rules of al-imamu manuutun thariqu bi al-maslabat.

Competence and popular vision can be included in the category of maximum requirements (al-hadd al-a'la) for a head of state. A head of state must actually make a clear social contract (aqdun ijtimaiyyun) with the people, so that when he becomes a leader he truly represents and carries the aspirations of the people for the common good. A leader must not see the people like "cash cows" and "grazing animals", but rather as parties who must be protected and prioritized above their personal and group interests. For this reason, the requirements for competence and alignment with the interests of the people are much more important than physical health [4].

Meanwhile, physical health is a minimum requirement (al hadd al-adna), especially in order to avoid bad possibilities from physical imperfections (five senses). Here, of course, a leader who is physically perfect will have more value than a leader who is not physically perfect. In short, the requirements recommended by jurisprudence are a leader who is perfect in terms of leadership, fair and has a people's vision, provides benefits to the people, and will be more perfect if he is physically perfect. For this reason, in order to restore the ideals of Islam which have not been implemented because they have been reduced and distorted due to incomplete interpretation. Borrowing from Kuntowijoyo's statement, a program for renewing Islamic political thought is needed in order to re-actualize and transform Islamic law in the political field for the present and the future.

Learn from al-Mawardi's experience. First, it is necessary to develop a collective interpretation more than individual interpretation in understanding the provisions of the Qur'an, from textual to contextual but rational and realistic. Second, change the way of thinking subjectively to the way of thinking objectively, discarding all assumptions based on one-sided perspectives to become a consensus. Third, changing normative Islam into sociological. Because, the tendency that has developed so far is only normative interpretation of texts and does not pay attention to

¹⁰Ibid

sociological aspects. Fourth, change a-historical understanding to historical. The stories contained in the Qur'an, such as Muhammad's migration from Mecca to Medina, are not just a simple move, but are related to cause and effect relationships and are also related to laws in the field of worship, muamalah, siyasah and jinayah.

Al-Mawardi's Benefit Theory: Post-Theory of Ijma' fi al-Siyasi

The concept of Ijma' introduced by al-Mawardi in al-Ahkam al-Sulthoniyah is actually a treasure of the tradition of Islamic thought which is quite revolutionary. Here too, al-Mawardi places ijma' as an accumulation of the results of previous ijihad and at the same time is a positive step to mature the function of religion as a moral and ethical source to arouse collective consciousness that is more anthropocentric in nature. The potivistic approach and dismantling of critical reasoning towards text (nash) and reality (context) on the theory of ijma' in the field of Islamic politics gave birth to a new legal theory called al-maslahat. When al-Mawardi placed benefits in the political field as a response to ijma', what emerged was qiyas. Uniquely, of the three categories of qiyas (Jali, Khafi and Syumuh), the theory of maslahat fi al-Siyasi and Al-Mawardi is included in the Qiyas Syumuli category. As an indicator, al-Mawardi balances the "mcraah thread" between the will and objectives of the law in the text (nash) with all humanitarian problems in reality (context). In other words, al-Mawardi's muslahat fi al-Siyasi theory is a post-theory. ijma' fi al-Siyasi [5].

In terms of ijma', there is a statement that "whoever has an opinion in accordance with the views of the majority of the Muslim community, he has actually fulfilled a consensus (ijma). On the other hand, whoever goes against the views of the majority of the Muslim community has actually violated the consensus. Negligence only occurs in the breakdown in reaching consensus. Meanwhile, consensus will not give rise to negligence regarding the meaning of the Qur'an, Sunnah and Qiyas (Analogy)." That is Imam al-Syafi'i's view in his mognum opus, al-Risalat regarding the importance of ijma' (consensus) in drawing legal conclusions. The key word in ijma' is the involvement of the majority of experts and intellectuals to determine a legal position which will later be used as a common reference.¹¹

In the concept of ijma', a law is not determined by political authority, but is owned by representatives of society, namely those who have expertise and expertise in religious matters. The concept of ijma' in the Islamic tradition can actually be said to be a revolutionary concept. Why not, because legal sources which previously only referred to the Al-Quran and Sunnah, then in the course of history, proved that there was authority other than the Al-Quran and Sunnah, namely ijma'. Ijma' has provided space for the discovery of authentic meaning that is sourced and consensus. One of the most important elements in ijma' is reasoning. And the result of the new reasoning is Maslahat fi al-Siyasi [1].

According to the author, Heman, a view like this is not random, but has a very strong normative basis, namely the hadith of the prophet narrated by Mu'adz bin Jabal. When he was sent by the Prophet Muhammad saw. to Yemen, he asked the Messenger of Allah about the method of making a law [7]. The Prophet gave three recipes at once, namely the Koran, Sunnah and Ijtihad. The availability of ijihad as a mechanism for making legal decisions is a very progressive step. Ijtihad becomes the "entry point" to answer various public issues that are increasingly complicated and

¹¹See Zuharri Misrawi's explanation, "Ijma' Concept as Autonomous Participation" in <http://islamlib.com/id/index.php?page=article&cid=567>

problematic, especially actual problems that have not been touched by religious texts. Of course, the *ijtihad* in question must consider capability and acceptability. What this means is that there is not just any *ijuhhad*.

Ibnu Hazm in *al-Muhalla*, believes in the need for reason to revive the spirit of religious sensitivity in highlighting actual problems. In fact, he mentions that a person who makes *ijtihad*, even if the product of his *ijtihad* is wrong, is much better than an attitude of following along (*taqlid*), even if the product is wrong. -the following is correct. He firmly believes that reason is needed to design the face of religion so that it becomes actual and contextual. The presence of reason at least brings a new awareness of human existence as rational creatures.¹²

This is where *Maslahat fi al-Siyasi* as the accumulation of the results of *Ijma' fi al-Siyasi* actually becomes a positive step to mature the function of religion as a moral and ethical source to arouse collective consciousness that is more anthropocentric in nature. There are many humanitarian problems that should be answered with the spirit of prayer. In relation to the democratic transition that we are currently undertaking together, the benefits of *fi al-Siyasi* can be interpreted more fundamentally in order to mature democratic behavior, namely realizing a truly participatory political attitude. The participation in question is not just a cliché, but rather a substantialistic participation, which always reflects the common good. This is where *Ijma' fi al-Siyasi* can be used as a mechanism to mature political participation aimed at the benefit of *fi al-Siyasi*.

3. METHODS

In this research, the urgency of selecting a leader in the Qur'an is examined through the lens of *Al-Mawardi*, utilizing the literature method informed by *Abu Hassan al-Mawardi's maslahat theory*.

4. RESULTS AND DISCUSSION

There are several very basic things in *Ijma' fi al-Siyasi* as a participation paradigm that gives birth to *Muslahat fi al-Siyasi*. *Mahmud Syaltut*, former *Grand Shaikh al-Azhar in ul Islam, Agidah wa Syariah* wrote four very basic things in *ijma'*.¹³

First, the concept of representation in *ijma'* is based on competence and capability. In the concept of *ijma'*, skill and expertise are fundamental. The *Shari'ah* states that people who will be involved in *ijma'* must have the ability to analyze and synthesize (*al-ilmam bisawail al-bahst wa al-nadhar*). If in religious matters one must know linguistics, spirit and the rules of the *Shari'a*, then in political matters, a person who will be a representative of the people must have the ability to analyze social problems, then diagnose and find solutions. Here representation is not a blank check, but a maximum capability.

Second, the concept of representation in *ijma'* must take into account regional representation (*tu'raf buldanuhum al-muntayirah fi al-aqalim*). In the realm of democracy, regional considerations are important, so that there is no central monopoly over the regions. One of the important things in democracy is decentralization. *Ijma'* also pays attention to the decentralization aspect, so that legal production is not a central monopoly. In *ijma'*, the regional aspect is important to reach a wider area and maintain balance.

Third, the concept of representation in *ijma'* requires comprehensive mastery of each problem (*a yu'rafa ra'yu kulli wahidin minhum*). The group that will take the *ijma'* actually goes to the field directly and knows the problem in as much detail as possible. Participation in democracy

¹²Ibn Hazm, *al-Miballa* (Karo: Dar al-Makrab, tth).

¹³Mahmud Syaltut, *Islam, Agidah wa Sharia* (Cairo: Dar al-Maktabah, 1990).

also requires that people's representatives be able to photograph problems that arise in society in a comprehensive manner, so that they can produce solutions that can reach the public benefit. In this context, the relationship between people's representatives and the people is actually direct, so that the conclusions and decisions that will be taken really touch the heart of the problems faced by the people in general.

Fourth, the concept of representation in *ijma'* relies on the existence of a consensus which will later be used as a common reference (*ittifaquhum jami'an fiha 'ala ra'yin wahidin*). Consensus is the culmination of participation, which ensures that there is a conclusion to be used as a reference in making changes. Wherever possible, consensus is the first step in building a new order that is just and civilized. This is where the existence of *ijma'* in the *fiqh* tradition provides inspiration for the realization of ideal participation, namely qualitative, representative and comprehensive participation, so that community participation can encourage the creation of radical changes for the purpose of public benefit (*Maslahat fi al-Siyasi*).

Therefore, the concept of *Ijma' fi al-Siyasi* should be able to encourage the formation of autonomous participation. *Ijma'* as a religious-based cultural mechanism can actually foster autonomous political participation which can ultimately become a controlling and balancing force. *Ijma'* during the time of Imam Syafi'i was used for matters of religious ritual. However, in the era of democracy, *ijma'* must provide a plus meaning to increase community participation in a better direction. A beautiful choice that the author calls *Maslahat fi al-Siyasi*.

CONCLUSION

Participation is at the heart of democracy. The better the quality of participation, the better democracy will be. According to Samuel P. Huntington and Nelson, there are two models of participation, namely autonomous participation and mobilized participation. Autonomous participation is much better, because it is born from the sacrifice and volunteerism of the community to be directly involved in fighting for their rights. Meanwhile, the participation mobilized only carries the interests of a small number of political elites.

In the 2004 elections, the majority of voters were Muslims, in fact they were able to make the election the maximum social contract. It is necessary to look for cultural mechanisms available in the classical tradition in order to raise awareness of the importance of autonomous and direct participation. Moreover, the 2004 election was the first election to be held directly, voters no longer chose images, but directly elected their representatives, both in parliament and in government. Therefore, we must participate autonomously to realize true democracy.

Learning from the theory developed by al-Mawardi regarding the most important benefit of *al-Siyasi* is building political consensus (*ijma' fi al-Siyasi*) as a means of obtaining public benefit. Therefore, all forms of decision making, especially those relating to mechanisms and procedures for selecting the head of government and state, should be carried out using *ijma'* and aimed at the benefit.

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