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Research Article

History of Criminal Law Enforcement and Islamic Justice in Saudi Arabia

Casduloh

Fakultas Hukum Universitas Wiralodra, casduloh2307@gmail.com

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Abstract. The Saudi Arabian judiciary can be an option for a modern justice system and is interesting to study because of several things, the first of which is that Saudi Arabia is the birthplace of the Prophet Muhammad SAW. and the Islamic religion is a role model for people throughout the world, but this country has a different government system from other Muslim countries. Saudi Arabian law is based on sharia which consists of the Koran and Sunnah. Ijmak and qiyas which were developed by the ulama after the death of the Prophet Muhammad also became sources of law. Judges' decisions in Saudi Arabia are heavily influenced by the writings of the Hanbali school of thought. Saudi Arabia is the only country in the world that makes the Koran and Sunnah its constitution, or at least it does not conflict with Islamic sharia and nothing else. The judiciary in Saudi Arabia is divided into three levels, namely Immediate Justice (*al-mahakim al-musta'jilah*), Syar'iyah Court (*al-mahakim asy-syar'iyyah*) and the Judicial Supervisory Body (*Hay'ah al-Muraqabah al-Qadha'iyyah*).

Keywords: Islamic Law, Judiciary, Saudi Arabia

INTRODUCTION

Saudi Arabia's legal system is based on traditional Islamic law, also called Sharia. The kingdom only recognizes as law what is regulated by God in the Qur'an and Sunnah. There are three main sources of law: Islamic law, statutory law, and royal orders. The monarchy's constitutive document, the Basic Laws of the Kingdom, states that the Qur'an and Sunnah constitute the Saudi Constitution. Sunnah is the teachings and actions of the Prophet Muhammad; His orders were compiled and interpreted in manuscripts drafted by scholars of Islamic law and jurisprudence.

The Kingdom of Saudi Arabia was proclaimed in 1932 AD, which was a combination of sovereign countries, namely Nejed and Hijaz, which previously stood alone. Nejed was under the leadership of Abd. Aziz Ibn Abd al-Rahman al-Su'ud, while Hijaz was under the leadership of Syarif Husain

Historically, Saudi Arabia is known as one of the largest Muslim countries and is also known as the place where Islam first entered. It is also one of the countries in the Islamic world which is quite strategic, especially because in this country there is the Baitullah in Mecca which is the center of the Hajj pilgrimage for Muslims throughout the world. Moreover, the Islamic journey cannot be separated from the territory of Saudi Arabia. Therefore, the development of Islamic law in Saudi Arabia cannot be separated from Islamic history itself.

Saudi Arabia does not recognize the separation of legislative, executive and judicial powers. The power of this country runs under the King in harmony and always adheres to Islamic law, and even though this country is experiencing progress or modernization, it still adheres to Islamic law and continues to use old traditions. Saudi Arabia is a constitutional monarchy which, although formally does not yet have a written constitution, has stated firmly that the basic rules contained in the Koran and Sunnah constitute the State's Constitution. Departing from this stance, the Kingdom of Saudi Arabia is obliged to implement all the provisions of Islamic law and in particular all the principles relating to Islamic democracy, so that at the level of application, this country is then claimed to be an Islamic state in the true sense.

The law used is Islamic sharia law based on the practice of Islamic teachings which is also based on the understanding of the friends, tabi'in of the Al-Quran and Hadith. Apart from using the sharia legal system, the laws implemented by the Saudi government also implement regulations and build institutions to handle cases that are not covered by sharia. It is designed to be in accordance with the principles of Sharia and complement them, not replace them. The result is a dual legal system, which is entirely based on sharia and has an autonomous nature that cannot be separated from sharia. Then Saudi Arabia is also known as a country that makes the Al-Quran and Hadith the basis of its constitution with the Hambali Madzhab as the state madzhab. The above matters have implications for the application of public and private law in that country.

Saudi Arabian law is based on sharia which consists of the Koran and Sunnah. Ijmak (consensus) and kias (use of analogies) developed by the ulama after the death of the Prophet Muhammad also became sources of law. Judges' decisions in Saudi Arabia are heavily influenced by the writings of the Hanbali school of thought. Saudi Arabia is the only country in the world that makes the Koran and Sunnah its

constitution. Even the constitution in Saudi Arabia is not called the "Basic Law"; the term used is "Basic Government System". With a system like this, sharia law is determined without needing to be codified first.

Outside of sharia law, Royal edicts (nizam) can also be issued, but these edicts are considered regulations and not laws, and such regulations must remain in line with sharia. Sharia law is the basis of all Saudi law. Until now, hudud punishments are often carried out in public. Homosexual acts were punishable by execution, although usually limited to flogging and imprisonment. All legal regulations in Saudi Arabia must be in accordance with sharia (Al-Quran and As-Sunnah) or at least not conflict with Islamic sharia and nothing else. Only criminal cases of murder, stoning and theft are heard by 3 judges in 1 panel, the rest are single judges.

For one trial, it doesn't take long. However, the delay can be up to 5 to 6 months so that a new case can be completed in 2 to 3 years. All of these things are free of charge or free. If the plaintiff files a lawsuit at the Riyadh Court, while the defendant is in Mecca, the defendant does not have to appear at the Riyadh Court. The defendant will be examined at the Makkah Court, and the results of the examination. The law of cutting off hands can only be imposed if 7 conditions are met. That is, there are witnesses who do not contradict or make mistakes in their testimony, the value of the items stolen must reach 0.25 dinars or 4.25 grams of gold. The next conditions are that the item stolen is not food (if the thief is hungry), the item stolen does not come from the thief's family, the item stolen is naturally halal, the item stolen comes from a safe place.

In accordance with the 1975 Judiciary Law, the highest state judiciary is al-Majlis al-A'la li al-Qadha' (Supreme Judicial Council/MA). Under it there are two appellate courts in Makkah and an appellate court in Riyadh. King 'Abdullah bin 'Abd al-'Aziz on October 1 2007 issued a Royal Order (King's Decree) regarding judicial reform. Based on the 2007 Judicial Law, the Supreme Judicial Council no longer plays the role of the Supreme Court. Based on this new regulation, the hierarchy of courts in Saudi Arabia becomes three levels. Namely the High Court as the Supreme Court, the Court of Appeal and the Court of First Instance. In these two courts there are Civil Court, Criminal Court, Family Law Court, Commercial Court.

DISCUSSION

History of Islamic Criminal Law in Saudi Arabia

Saudi Arabia is a law based on Islamic Sharia in all aspects of life. With the Hambali school as the official school. Basically, the history of Islamic law was born inseparable from the Islamic religion itself, namely since the time of the prophet Muhammad SAW. And the form of Islamic law originates from the Koran and hadith of the Prophet as well as the practice or sunnah of the Prophet himself. Regarding the implementation of family law in the Islamic world, according to Tahir Mahmood that Islamic countries with Muslim populations can be divided into three large groups, one of which is Saudi Arabia. This country is included in the countries that follow or enforce traditional Islamic family law, where traditional classical Islamic family law is enforced according to various schools of thought as a hereditary inheritance, has never changed and has never been codified until today. In Saudi Arabia, the

constitution mandates that all legislation must refer to the Koran and Sunnah, in the application of law, including family law. The traditional legal system refers to the Hanbali school of thought.

Islamic criminal law meets the requirements of modern criminal law. This law also recognizes the principles or principles of criminal law, whether known to western law or not. Such as the principle of legality, the principle of non-retroactivity and so on. One thing that is clear is that Islamic criminal law is different from Western law which does not recognize religious aspects. This law is actually closely related to religion as a way of human life. There are still several advantages and advantages of Islamic criminal law, so that these advantages make many people interested in formulating it into an official rule in a regulatory system that applies in a government system.

The criminal law system in Indonesia and Saudi Arabia is very different. Indonesia's legal system is influenced by legal pluralism which is caused by the existence of various types of tribes, cultural customs and languages. This condition of legal pluralism causes many problems when the law in a community group is applied in certain cases or when conflict occurs, so that there is confusion about which law is for a particular individual and how someone can determine which law applies to him. The big obstacle in facing legal pluralism is legal certainty to uphold justice. Thus, the legal system in Indonesia still adheres to legal pluralism and adheres more to legalism, especially in the discovery of Indonesian criminal law.

Meanwhile, Saudi Arabia's criminal law system is traditional Islamic criminal law as found in the Al-Qur'an, Hadith and Fiqh books. Despite undergoing extensive modernization and industrialization, Saudi Arabia still maintains sharia law in general. Among the various aspects, Islamic law that is still valid in this country is Islamic law regarding crime and its laws (Islamic criminal law). Regardless of whether the implementation is correct or not, one thing that is clear is that officially the Saudi Arabian state has never accepted the western secular system in its laws and judiciary. On the other hand, the position of Islamic law is still maintained even though it is sometimes inaccurate and inappropriate.

In general, the judiciary in Saudi Arabia adheres to a dual legal system, which consists of 2 (two) types, namely first, an independent judiciary which is autonomous, but does not conflict with the Shari'a, secondly, the Syar'iyah judiciary (shari'ah justice) . at Islam) which is completely based on Shari'a . An independent judiciary is an administrative judiciary. This court is not specifically based on Islamic Shari'a , but is designed to be in accordance with the principles of Shari'a by paying attention to and adopting the spirit of Shari'a in general.

Saudi Arabia is a country that is home to two holy cities, namely Mecca and Medina, where these two cities are centers for the spread of Islam. Mecca is the birth city of the Prophet Muhammad SAW and for 13 years Islamic broadcasting in this city has focused on issues of faith and morals. Meanwhile, Medina is the city where the Prophet died and is also the capital of the country built by the Prophet. In this city, the Prophet received many revelations relating to social issues including legal issues. Of course, the kingdom of Saudi Arabia continues to apply Islamic law as state law.

Thus, it can be said that Saudi Arabia is based on Islamic law or adheres to an Islamic legal system.

Constitutional Status

Saudi Arabia does not have a formal constitution. Most of the constitutional foundations of the kingdom are collected in *the Nizham Majlis al-Wuzara'* (Law on the Council of Ministers). The Council of Ministers Law has been revised several times to adapt to current developments. King Faisal from 1959 to 1960 made serious efforts to create a new constitution for Saudi Arabia, but was not successful. During his reign (1964-1975), Faisal made many changes, including establishing the Ministry of Justice (*wizarah al-'Adl*) in 1970 as the main judicial authority.

Thus, if Saudi Arabia's legal hierarchy is based on Hans Kelsen's pure theory, the highest law is the Al-Qur'an and the Sunnah of the Prophet. Meanwhile, Basic Law and Laws are ranked second and third. The King's Decree is the fourth rank. These three types of legislation must be in accordance with the legal principles contained in the Koran and the Sunnah of the Prophet. The formulation of basic laws, statutes and King's decrees is based on the Al-Qur'an and the Sunnah of the Prophet, so all these rules are known as sharia law. Based on this hierarchical ranking, the sources for extracting Saudi Arabian law are Revelation (the Koran and Sunnah of the Prophet) and *ijtihad*.

The point is that disputes are resolved based on seniority, deliberation and Islamic Sharia. The justice system in this country has changed over time, but Saudi traditions are still visible in the face of the judiciary and the applicable law has never changed, namely Islamic Sharia. In the judicial reform that has been underway since 2007, Saudi Arabia is working hard towards a modern judiciary that can answer the challenges of the times and at the same time does not want to be separated from old traditions and Islamic Sharia.

Justice System

Before the founding of the kingdom of Saudi Arabia, in this region there were three types of judiciary. Firstly, the Hijaz region has a better system compared to other regions. Secondly, in the Najed area (around Riyadh) follows a traditional system passed down from generation to generation based on existing traditions. This system has never been updated. Dispute resolution is carried out by the Judge and Amir (the king or descendant who is the ruler) for the benefit of the parties to the dispute. Third, outside the two areas above, dispute resolution is carried out based on customs in certain tribes which are more in the nature of arbitration (*tahkim*).

After the kingdom of Saudi Arabia was established, the three systems above were abolished based on the King's decree (*al-Marsum al-Malaki*) dated 4 Safar 1346H/1927 AD. Then all courts were reformed into one system. In the early days of the founding of the kingdom of Saudi Arabia, the judiciary initially had direct contact with the king. It is the king who supervises the judiciary and important decisions are handed over to him. But then he delegated this authority gradually to special judges and formed the necessary bodies under the supervision of the King. Judicial

arrangements became increasingly neat, especially when King Faisal established the Ministry of Justice in 1962 and appointed the Minister of Justice in 1970.

In Saudi Arabia, there is a body that has the authority to make all regulations for public order. Certain regulations were made by decree of the King who acted not only as executive implementer but also as law maker. As can be seen in article 24 of the king's decree, it states that the judiciary in Saudi Arabia is divided into three levels, namely Immediate Justice (*al-mahakim al-musta'jilah*), Syar'iyah Court (*al-mahakim asy-syar'iyyah*) and the Supervisory Body Judiciary (*Hay'ah al-Muraqabah al-Qadha'iyyah*). In accordance with this new regulation, three courts were formed in Jeddah, Makkah and Medina. Meanwhile, other cities have their own systems which are also regulated by their own regulations.

Because Saudi Arabia is an Islamic country, its justice system is based on Islamic law (Shariah) for both criminal and civil cases. At the top of the legal system was the King, who acted as the final court of appeal and as the source of forgiveness. The Saudi court system consists of three main parts. The largest court is the Sharia Court, which handles the majority of cases in the Saudi legal system. Sharia Courts are divided into several categories: Courts of First Instance (General and General Courts), Courts of Cassation and Supreme Judicial Council.

The Basic Law of the Kingdom of Saudi Arabia emphasizes that the judiciary is an independent power and judges cannot be punished for their decisions unless it is clearly and legally justified that the judge has committed an act prohibited by statutory regulations. The Indonesian justice system and the Kingdom of Saudi Arabia have elements of similarities and differences. There are two judicial institutions in Saudi Arabia, namely Al Qodho' Al Idari (State Administration) and Al Qodho' Al 'Aam (General Court). Both of them are executors of judicial power in Saudi Arabia

Immediate justice has authority in civil and criminal matters. Criminal authority concerns crimes that cause injury, qishash, certain violations of ta'zir and hudud. The civil authority concerns financial matters of no more than 300 riyals and the decision cannot be compared except for decisions that violate *nushush* (religious texts) and *ijma* (consensus of Islamic legal experts). Meanwhile, the sharia court handles other than immediate judicial authority in various fields according to its competence. Decisions are given based on consensus. Meanwhile, serious criminal cases such as cutting off hands and the death penalty require a judicial plenary session.

Meanwhile, the Judicial Supervisory Body (*Hay'ah al-Muraqabah al-Qadha'iyyah*) based in Makkah is also called the Supreme Sharia Court (*al-Mahkamah asy-Syar'iyyah al-Qubra*) and consists of three judges. It is an appellate court for subordinate courts and simultaneously controls the administration and supervision of justice. Apart from that, the Supreme Sharia Court also issues fatwas requested from it, supervises education and educational curricula as well as supervision of institutions.

CONCLUSION

Saudi Arabia's criminal law system is traditional Islamic criminal law as found in the Koran, Hadith and Fiqh books. Despite undergoing extensive modernization

and industrialization, Saudi Arabia still maintains sharia law in general. Among the various aspects, Islamic law that is still valid in this country is Islamic law regarding crime and its laws (Islamic criminal law). The judiciary in Saudi Arabia is divided into three levels, namely Immediate Justice (*al-mahakim al-musta'jilah*), Syar'iyah Court (*al-mahakim asy-syar'iyah*) and the Judicial Supervisory Body (*Hay'ah al-Muraqabah al-Qadha'iyah*).

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