

Comparison Between Justice Institutions in Indonesia and Justice in The State of Khilafah Hizbut Tahrir Version

Nugraha Pranadita
Master of Law Studies Program
Post-Graduate School of
Nusantara Islamic University
Bandung, Indonesia
nugpra@yahoo.com

Abstract—Crime is a universal problem faced by all civilizations in the world. Various cultures in the world have their own ways of fighting crime that is in their society. The law enforcement mechanism becomes a controlling instrument of crime that is operated by law enforcement. Meanwhile, the judiciary is believed to be an institution that is expected to bring justice, to perpetrators and victims. For a welfare law state such as Indonesia, the function of the court is not only to bring legal certainty and justice, but must be able to be a catalyst and facilitator of community welfare. For Muslims who are a big part of the current flow of world culture, the development of judicial institutions can be seen from the time of the Caliphate government. In this wake, this paper discusses the comparison between the judicial institutions in Indonesia and the judicial institutions that may exist in a khilafah state along with the potential problems. The model of the khilafah state to be discussed here is a model of the khilafah state according to Hizbut Tahrir. Thus this research is normative legal research.

Keywords— *crime, institution, court, state and khilafah*

I. INTRODUCTION

“Khilafah is a system of government whose territory is not limited to one country, but many countries in the world, which are under one leadership with its legal basis is Islamic law” [1]. It is understood that in the caliphate the identity of a country no longer exists, and unites with the identity of other countries. In fact, Indonesia is a pluralistic country, according to the Central Bureau of Statistics there are 1,331 ethnic categories in Indonesia [2]. In other countries it is also possible to comprise many ethnic groups within it. If a thousand different ethnic groups will be tried to be united, how much potential conflicts that might arise? How can the judiciary in the khilafah state overcome or resolve the conflict?

In the title of this paper it is mentioned "khilafah state" as a country, even though the khilafah itself means a combination of several countries. In this case the author understands the combination of several countries in a khilafah can be seen as the manifestation of a new country, namely; khilafah state. The last Caliphate on earth ended in 1924 with the end of the Ottoman Turkish empire. This should be the basis of critical analysis of the urgency of the formation of the Caliphate at this time, especially in Indonesia. The existence of a country

will reduce the diversity that exists in society (state) while humans are indeed created “with various nations and tribes with the aim of getting to know each other and relate well to each other” [3]. This is explained in the Qur'an, Ah-Hujurat verse 13, which means; “O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! the noblest of you, in the sight of Allah, is the best in conduct. Lo! Allah is Knower, Aware” [4]. The difference is beautiful as long as it is not destructive.

Islamic culture is part of a large current of culture in the world. In 2012 of the world's 7,167 billion people, 1.8 billion of them were Muslim. This amount covers 24.1% of the entire human population on the face of the earth [5]. In Indonesia as a country with the largest population of Muslims in the world, Muslims in 2010 are estimated to amount to 237,641,326 people or 87.18% of the total population of Indonesia [6]. The strong flow of Islamic culture in the world has even been able to influence legal institutions in the United States. “New surprise: America, the champion of the democratic country, now has sharia regulations. With the new regulation, now traders in the State of Indiana, where I study, may refuse to serve consumers based on religious beliefs. The local parliament (a combination of DPRD members and members of the regional senate) passed the regulation last week. This is the first state in the United States (US) who have such rules” [7].

“Some researchers such as Todd M. Johnson, co-editor of the Atlas of Global Christianity, and Houssain Kettani, Researcher on the Development of Islamic Populations, believe that the number of Christians will continue to grow so that it always exceeds the number of Muslims. Even so, some researchers such as Richard W. Bulliet, historians from Columbia University, and David Coleman, University of Oxford demographers, have different opinions. It is estimated that Islam can become a majority religion. The argument is based on trends that have occurred in the past” [8]. “Russia will become one of the largest Muslim population in the world. According to Russia Today, experts say, by 2050, the number of Muslims will reach half of the Russian population. This is based on data that mentions the Muslim population there are around 21 to 28 million people or 15 to 20 percent of

the approximately 142 million population” [9]. At the end of time, the majority of the population in the world embraced Islam. This is in accordance with the words of the Prophet Muhammad; “You Muslims will be contested by other people such as those who fight for food (dishes) that are in front of him.” We (the friends) ask, “Is it because our numbers are small at that time, O Messenger of Allah? The Prophet answered: “o, there are even many of you. But you are like foam in the flood, really God will uproot fear from the hearts of your enemies, and truly Allah will enter Wahn's disease in your heart. We ask, “Is Wahn's disease O Messenger of Allah? He answered, “Love the world and fear death.” (HR. Ahmad dan Abu Daud).

Religion and culture are related to one another. Islam will certainly give birth to Islamic culture. The large number of adherents of Islam in the world will certainly be the driving force for the formation of Islamic culture universally in the world which in the end this awareness will lead Muslims to a question; why not form an Islamic state? Such thinking can be a manifestation of the love of Muslims to Allah SWT, but it can also be politically motivated by expecting to gain power, or economic motives for merely obtaining economic benefits, or other motives.

Choosing to become a Unitary State of the Republic of Indonesia or becoming a khilafah state has implications for all joints of people's lives, one of which influences the existence of a judicial institution in Indonesia. To find out how the different judicial institutions prevailing in Indonesia today with the judicial institutions that apply in a khilafah country according to the version of Hizbut Tahrir, the researcher will describe them in this paper so that the readers can have a clearer picture of the comparison between the two judicial institutions. The researcher hopes that the papers from this research can contribute to an increase in understanding of various legal institutions in the world so that they can enrich the treasury of legal science and can become part of the legal system that applies as it should. Based on the heterogeneous structure of Indonesian society, the results of this study are expected to be more convincing to us that the judiciary applied in Indonesia today, with all its shortcomings, is still more rational, productive, and efficiently implemented in Indonesia compared to the version of the judiciary in khilafah Hizbut Tahrir.

II. DISCUSSION

The emergence of a country is a phenomenon, depending on the angle at which the phenomenon is seen. Viewed from a legal perspective, the formation of a state is a legal phenomenon caused by a national legal order [10]. Viewed from a social point of view, the formation of a state is a social phenomenon because humans are social beings (according to Aristotle; Zon Politicon) who in essence always want to get along and gather with each other to then form community groups or countries [11]. The formation of a country can also be seen from another perspective; such as economic, religious, and other points of view.

From a legal perspective, the state is a legal subject in the form of juridical construction which is not a reality [12]. The existence of a country can be seen from its characteristics, namely [13]; (1) coercive nature, (2) regulating traits, (3) forming traits, (4) dominating traits, (5) monopoly traits, (6)

controlling traits, and (7) managing traits. The existence of a country according to the Islamic view is very important. In the hadith mentioned that [14]; “sixty years under tyranny better than one night without government”, what is meant by the government here is certainly the existing government in a country.

Historical facts show that during his lifetime, the Prophet Muhammad SAW had formed a "state" called "the State of Medina". At that time the Prophet Muhammad never called it an Islamic state. This can be known because in the Qur'an and the hadith are not known to Islamic countries. Thus sociologically and politically-ideologically the term Islamic state is not genuine originating from Islamic culture. The term Islamic State (Dar el-Islam / Dawlah Islamiyah) itself was only known in the 20th century [15]. But there are also those who argue that the preamble contained in the Medina Charter signed by the Prophet Muhammad SAW was a proclamation of the establishment of a country. Thus the Islamic state has existed since the reign of the Prophet Muhammad SAW [16]. Related to this, the experts differed on whether the Prophet Muhammad SAW had only brought the message of divinity, or brought the minutes of power too [17].

Ali Abd Ar-Raziq and Fauzi An-Najjar argued that the Prophet Muhammad SAW had never formed a country and there was no country at the time. Thus the Prophet Muhammad SAW only brought the message of divinity and did not carry the minutes of power. Meanwhile Dhiya Ad-Din Ar Rais, Rashid Ridha, Muhammad Asad, and Abu Zahrah argued that the Prophet Muhammad in his lifetime had formed a country and therefore there was a country in his time. Thus it can be understood that the Prophet Muhammad brought the message of divinity and minutes of power [18].

About how the relationship between Islam and the existence of a country can be divided into two forms, namely [19]; (1) Islamic state (Islamic state), where Islam is used as the official religion of the country and is included in its laws, and (2) Muslim countries (moslem countries), where Islamic values are part of the joints of life the community because the majority of the community is Muslim, but does not make Islam the official religion of the country.

The majority of the population of Indonesia is Muslim, but Indonesia is not an Islamic state (religious state). Indonesia is a legal state [20]. Although Indonesia is not an Islamic state, the 1945 Constitution of the Republic of Indonesia is in accordance with the teachings of Islam [21]. What is meant by the teachings of Islam here are not detailed teachings (juz'iyat and tafshiliyat), but fundamental Islamic teachings (muhkamât) and fundamental (ushuliyat) as separators between the true (haqq) and the false (bâthil), or it can be said as a separator between the praised (mahmûdah) and the disgraceful (madzmûmah) [22]. Although de jure (legally) Indonesia is not an Islamic state, but de facto (in reality) Indonesia can be said to be a Muslim country. This can be based on one of the facts of history that according to the 11th Nahdlatul Ulama (NU) Conference Decree on June 9, 1936 in Banjarmasin, the congress had granted legal status to "the Indonesian state" (the Dutch East Indies) which was still controlled by Dutch colonizers as Dâr al-Islâm (Islamic country) [23] because at one time in the past had been fully

controlled by Muslims so that they could freely carry out the Islamic Shari'a, it still continues to this day.

A. Judicial Institutions in Indonesia

According to the word meaning, the institution is [24]; "body (organization) whose purpose is to carry out a scientific investigation or conduct a business". While the judiciary according to the meaning of the word is [25]; "everything about the court case". So according to the meaning of the word, a judicial institution is a body (organization) formed to do everything related to cases in court. A judicial institution is a judicial (organization) body. "The independence of judicial institutions cannot be separated from theoretical debates about separation of powers (separaion of powers)" [26]. In addition, the judiciary plays an important role in the implementation of the concept of the rule of law which is the welfare of the community within a just democratic framework. Whereas the justice system in Indonesia has two main objectives [27]; that is; (a) to protect the community, and (b) enforce the law. Judicial institutions are part of the judicial system, thus the main purpose of the judiciary can be seen as the same as the main objective of the justice system itself.

Judiciary in Indonesia is useful for upholding law and justice, held by a judicial authority carried out by a Supreme Court and judicial bodies under it [28]. The judicial bodies under the Supreme Court are; (1) general justice, (2) religious justice, (3) military justice, and (4) state administrative court. In addition there is also the Constitutional Court. Based on Article 27 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, it is possible for a special court within the court to be under the Supreme Court. These special courts include [29]:

- 1) Located in the District Court, namely:
 - a) The Human Rights Court is based on the Law of the Republic of Indonesia Number 26 of 2000 concerning the Court of Human Rights.
 - b) The Industrial Relations Court is based on the Law of the Republic of Indonesia Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes.
 - c) The Fisheries Court is based on the Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries.
 - d) Commercial Court based on Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Delay of Obligation to Pay Debt.
 - e) Shipping Court based on the Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping.
 - f) Corruption Court based on the Republic of Indonesia Law Number 46 of 2009 concerning the Corruption Court.
 - g) Juvenile Court based on Republic of Indonesia Law Number 11 of 2012 concerning Child Criminal Justice System.
- 2) Being in the Environment of the Religious Courts, namely: The Islamic Court of Justice based on the Law of the Republic of Indonesia Number 18 of 2001 concerning Special Autonomy for the Province of Aceh Special Province as the Province of Nanggroe

Aceh Darussalam jo Provincial Syar'iyah Court in Nanggroe Aceh Darussalam Province.

- 3) Located within the Military Courts, namely: Military Battle Courts based on Republic of Indonesia Law Number 31 of 1997 concerning Military Courts.
- 4) Located within the State Administrative Court, namely: Tax Court based on Republic of Indonesia Law Number 14 of 2002 concerning Tax Court.
- 5) Can be in all court environments, namely: Customary Court based on the Law of the Republic of Indonesia Number 21 of 2001 concerning Special Autonomy for Papua Province.

In the past, special courts have been formed in Indonesia, including; The Land Reform Court is based on the Law of the Republic of Indonesia Number 21 of 1964 concerning the Land Reform Court which was subsequently abolished by the Law of the Republic of Indonesia Number 7 of 1970 concerning the Elimination of the Land Court of Justice.

In addition there are also state institutions (not judicial institutions) that have the function of "prosecuting", among others [30]:

- 1) The Business Competition Supervisory Commission (KPPU) is based on the Law of the Republic of Indonesia Number 5 Year 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.
- 2) The Indonesian Broadcasting Commission (KPI) is based on the Law of the Republic of Indonesia Number 32 of 2002 concerning Broadcasting.
- 3) The Information Commission is based on the Republic of Indonesia Law Number 14 of 2008 concerning Public Information Openness.
- 4) The Ombudsman of the Republic of Indonesia (ORI) is based on the Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
- 5) The General Election Supervisory Agency (Bawaslu) is based on the Law of the Republic of Indonesia Number 15 of 2011 concerning General Election Organizers. And others.

There is one judicial body that is "unique", namely the tax court as referred to in the Law of the Republic of Indonesia Number 14 of 2002 concerning the Tax Court. The unique nature of the tax court is because in many cases the tax court differs from the other four court institutions. "The Tax Court is a judicial body that carries out judicial powers for taxpayers or tax bearers who seek justice against tax disputes"[31]. Based on this, the tax court is part of the judicial power in Indonesia.

The seat of the tax court is in the capital city, in this case the jurisdiction of the tax court covers the entire territory of Indonesia [32]. Technical guidance on tax courts is carried out by the Supreme Court [33], meanwhile organizational development is carried out by the Ministry of Finance [34]. The duty and authority of the tax court is to examine and decide on tax disputes [35], and to supervise legal counsel and provide legal assistance to the parties to the dispute [36]. In certain cases it is possible to appeal against the decision of the tax court [37]. Regarding tax disputes, the tax court is the first and final court [38].

In contrast to other court institutions, in the trial of the tax court, the question of one of the parties to the witness can only be carried out through the Chief Judge of the trial [39]. "The

Tax Court decision is the final decision and has permanent legal force" [40]. In principle, the decision of the tax court can only be made an effort to review the Supreme Court as an extraordinary effort [41].

B. Judicial Institutions in the Khilafah State Version of Hizbut Tahrir

The function of the judiciary in a khilafah state is to "submit binding legal decisions" [42]. Thus the task of the judiciary in a khilafah state is [43]: (a) resolve disputes among community members, (b) prevent things that could endanger the rights of pilgrims, (c) resolve disputes that occur between the people and someone sitting in a government structure. What is meant here is the ruler or civil servant, whether the caliph or not the caliph. Based on the definition, there are two possibilities for the judiciary in the khilafah state, namely; (a) there is only one judicial institution that is basically tasked with completing the three areas of duty, or (b) there are three judicial institutions each tasked with completing only one area of duty.

If in the khilafah state there are three judicial institutions with different tasks, then the division of tasks is as follows:

- a. The judiciary in charge of "resolving disputes among community members" [44]. If it is adapted into the existing justice system in Indonesia, the judiciary in question specifically deals with civil affairs. Thus the same as part of the duties of the general court in terms of enforcing civil law.

As for the legal basis:

"wa-ani uhkum baynahum bimaa anzala allaahu walaa tattabi' ahwaa-ahum waihtsarhum an yaftinuuka 'an ba'dhi maa anzala allaahu ilayka fa-in tawallaw fai'lam annamaa yuriidu allaahu an yushiibahum biba'dhi dzunuubihim wa-inna katsiiran mina alnnaasi lafaasiquna" (So judge between them by that which Allah hath revealed, and follow not their desires, but beware of them lest they seduce thee from some part of that which Allah hath revealed unto thee. And if they turn away, then know that Allah's Will is to smite them for some sin of theirs. Lo! many of mankind are evil-livers : QS: Al-Maidah Ayat: 49). [45]

wa-idzaa du'uu ilaa allaahi warasuulihi liyahkuma baynahum idzaa fariiqun minhum mu'ridhuuna [46] (And when they appeal unto Allah and His messenger to judge between them, lo! a faction of them are averse : QS. An-Nuur Ayat: 48) [47].

Rasulullah SAW. say to Ali RA. [48]:

If you sit in front of two litigants, you must not decide until you hear the other party as the first party, because it will be better so that it is clear to you in deciding the case (HR al-Hakim. According to him valid and agreed upon by ad-Dzahabi).

- b. The judiciary in charge of "preventing things that could endanger the rights of worshipers" [49] (*hisbah*). According to the meaning of the word, worshipers are a lot of people or public. With different sentences, it can be said that the task of the judiciary is to protect the interests of the community from what is done by members of the community. If it is adapted into the justice system in Indonesia today, the task of the judicial institution in question is the same as the general court's

duty in terms of upholding criminal law. The meaning of *hisbah* is "conveying binding sharia law decisions in matters that endanger the rights of pilgrims" [50].

As for the legal basis:

"From Abu Hurairah ra, actually Rasulullah SAW, ever walked past a pile of food. He then put his hand in and found that some of it was still wet. He then said: "What is this, O food owner?" The food owner said, "It was hit by rain, Rasulullah". Then he said, "Then why don't you put it up so that people can see it. Anyone who cheats is not included in our group". (HR. Muslim)" [51].

- c. The judiciary in charge of "dealing with disputes that occur between the people and someone sitting in the government structure" [52]. In other words, the judiciary resolves disputes that occur between communities and government administrators. If adapted to the current justice system in Indonesia, the function of the judiciary is the same as the function of the state administrative court.

The legal basis is:

Yaa ayyuhaa alladziina amanuu athii'uu allaaha wa-athii'uu alrrasuula waulii al-amri minkum fa-in tanaaza'tum fii syay-in farudduuhu ilaa allaahi waalrrasuuli in kuntum tu/minuuna biallaahi waalyawmi al-aakhiri dzaalika khayrun wa-ahsanu ta/wiilaan [53] (O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end : QS. An Nisaa ayat: 59) [54].

"... I do not expect to meet (facing) Allah SWT, while there are people who sue me for a tyranny that I have done to him, both in matters relating to blood or ... (HR Ahmad from Anas)" [55].

The division of judicial institutions in the khilafah state is closely related to the existence of various qadhi (judges) in the era of the Prophet Muhammad. There are three qadhi maxams, i.e. [56]. (a) ordinary qadhi, (b) qadhi al-muhtasib, and (c) qadhi mazhalim. Ordinary Qadhi is qadhi in charge of solving muamalah and 'uqubat problems. According to the meaning of the word, muamalah is "things including social affairs (association, civil, etc.)" [57]. While uqubat is "a sentence that can be imposed by a judge against the perpetrators of jarimah. ..., "uqubat is called sanction" [58]. Whereas what is meant by jarimah is "actions that are prohibited by Islamic law which in the qanun are threatened with certain penalties" [59]. Basically jarimah and jinayah have almost the same meaning, which is related to criminal acts, only the scope is different [60]. Based on this definition it can be seen that ordinary qadhi can deal with civil and criminal matters. Thus the judiciary in charge of "resolving disputes among community members" handled by ordinary qadhi can actually deal with civil and criminal matters specifically related to individual interests.

Qadhi al-muhtasib is a qadhi whose duty is to solve the problem of irregularities (*mukhâlafât*) which can endanger the rights of pilgrims [61]. Based on the description in the previous section above, qadhi al-muhtasib is tasked with resolving criminal problems that have an impact on society in general, not just harming the community individually. This is

what distinguishes between ordinary qadhi duties and qadhi al-muhtasib even though both are dealing with criminal matters.

The qadhi mazhalim is in charge of dealing with dispute resolution that occurs between the community and the state apparatus [62]. Disputes arising from the actions of the state apparatus in carrying out their duties as a state apparatus. In other words, qadhi mazhalim resolves disputes in the interests of individuals within the community who are harmed by the actions or decisions of the state which are generally carried out in the interest of the community itself.

Based on the description above, taking into account the various qadhi tasks that exist and are known during the Prophet Muhammad's leadership, we can see a real connection between the various qadhi and the various judicial institutions that exist in the khilafah state of Hizbut Tahrir. To answer questions; whether the judge or judiciary first exists, then according to the description above; the judge is there first, then there is a judicial institution as a means of the judge in carrying out his duties.

To provide a broader understanding related to the scope of judges' power according to the thoughts of Islamic thinkers, the following is the thought of Imam al-Mawardi in his book entitled *Al-Ahkam ash-shulthaniyyah*. According to Imam al-Mawardi there are general (broad) judges' powers, and some are specific (narrow). The power of judges who are general and mutlah are as follows [63]:

- a) Reconcile hostility, strife and conflict, both peacefully (voluntarily) and by force.
- b) Take the right of the person who suspended it to then return it to the person who has the right to receive it.
- c) Become a guardian for people who are prohibited from using their property because they are crazy, children, stupid or bankrupt.
- d) Manage waqf assets.
- e) Conducting will (of dead) / Melaksanakan wasiat
- f) Marrying virgins with men who are equal if they do not have a guardian.
- g) Applying had (punishment based on Islamic law [64]) to people who have the right to receive it. Had here must be interpreted related to civil disputes.
- h) Thinking about the benefits in his working area.
- i) Give attention to witnesses and employees.
- j) Positioning the same between strong people and weak people, is fair and does not obey lust.

Based on the judge's authority in carrying out his duties, according to Imam al-Mawardi can be described as follows [65]:

- a) Judge authorities are limited by a certain area, but their duties are general in nature, can handle various problems.
- b) Judge authorities are limited by a certain area, and their duties are also specific, only dealing with certain problems.
- c) The judge's authority is limited only to people who come to the mosque or the house where he is in charge, but can resolve various problems faced by the person facing the judge.
- d) It is possible that there are several judges in one area with clear assignments.

- e) Assignment of judges can be limited by certain cases only or within a certain period of time.

Based on the opinion of Iman al-Mawardi, it can be seen that in the Islamic tradition, the existence of judges is a priority (occupying an important position). The place where the judge is assigned is not always in the court, but can be at home or at the mosque, if indeed the judge is assigned to the place. The task of judges according to Imam al-Mawardi can be specific, only to deal with certain matters, but indeed the division of the duties of the judges is certainly different from the distribution of the duties of judges as is common today.

The duty of judges according to Islamic tradition is very important and very heavy, this can be seen from the explanation given by Umar ibn Khathab r.a. (as caliph) to Abu Musa al-Asy'ari regarding the conditions for becoming a judge as follows [66]:

"Amma ba'du, Indeed, the court is a strong obligation and a Sunnah that must be followed. Because of that, understand what is being said to you! In fact, there is no point in correct statements if they are not implemented. Treat everyone equally in your views, your justice, and your position so that noble people do not wish to target what is your pleasure and weak people are not discouraged to get justice from you. Evidence must be brought by the plaintiff, while the oath must be stated by the party who wants to reject the claim. Peace among fellow Muslims is permitted, except peace to justify something that is forbidden and forbid something that is lawful. The decision that you issued yesterday should not prevent you from reviewing today because the truth has always been fixed and reviewing to obtain the truth is better than protracted in falsehood. Beware of something that doubts your heart and the law has not been found in the Kitabullah and the Sunnah of His Prophet. Next, study similar examples and parables and make them for consideration and size. Give a time limit for people who claim to have rights or evidence, which at the time of the trial, the rights or evidence cannot be demonstrated. If he succeeds in showing evidence, give it to him. However, if he cannot provide evidence, you may issue a legal decision because it is an effective way to eliminate doubts and give more explanation to people who do not understand. Muslims must be fair witnesses to others, except those who have already had had or are known to have given false testimony, or are known to be unfaithful and unclear. Indeed, Allah forgives the oath and refuses to be grateful. Stay away from anger, saturation, and complicate problems when a dispute occurs. The right legal decision and the target of truth will get a great reward from God and will be remembered in praise. Wassalam".

C. *Comparison of Judicial Institutions*

What is meant by the comparison of judicial institutions here is the comparison of the existing judicial institutions in Indonesia with the judicial institutions that are estimated to exist in a Khilafah state version of Hizbut Tahrir. In Indonesia there are currently four judicial institutions under the Supreme Court, namely; general justice, religious justice, military justice, and state administrative courts. Whereas in the Khilafah state there are only three judicial institutions, namely; civil court, criminal justice, and state administrative court. If the division of judicial duties in the Khilafah state is

such, the functions or tasks that have been carried out by religious courts and military courts have not been handled.

No.	Comparison	Judicial Institution in Indonesia	Judicial Institutions in the Khilafah State
1	Legal Basis for Establishing a Judicial Institution	1. 1945 Constitution 2. Written law 3. Presidential Decree	1. Al Quran 2. Hadits
2	Division of Functions "Trial"	1. Judicial Institution 2. Other institutions (not courts)	Judicial Institution
3	Distribution of Judicial Institutions	1. District Court a. Human Rights Court b. Industrial Relations Court c. Fisheries Court d. Commercial Court e. Shipping Court f. Corruption Court g. Juvenile Court 2. Religious Courts a. Mahkamah Syar'iyah 3. Military Courts a. Military Court of Battle 4. State Administrative Court a. tax Court	1. Courts that resolve disputes among community members. In this case, it can be compared with the District Court that handles civil cases 2. Courts that prevent things that can endanger the rights of pilgrims. In this case it can be equated with the District Courts that handle criminal cases 3. Courts that deal with disputes that occur between the people and someone sitting in the government structure. In this case it can be equated with the State Administrative Court and or Military Courts

TABLE I. COMPARISON OF JUDICIAL INSTITUTIONS

III. CONCLUSION

1) The existing judiciary in Indonesia is more broad and specific compared to the judicial institutions that may be in the Khilafah state version of Hizbut Tahrir.

2) There may be a problem with the jurisdiction of the court related to criminal cases because it can be handled by two different judicial institutions which may be in the Khilafah state by the Hizbut Tahrir.

3) It is possible for certain cases which cannot be handled by the judiciary in the Khilafah state by Hizbut Tahrir because it is not an absolute jurisdiction.

4) The existing judiciary in Indonesia is more effective and comprehensive in terms of handling cases compared to the judicial institutions that may be in the khilafah state by the Hizbut Tahrir.

REFERENCES

- [1] Aiman Witjaksono, Jika Khilafah Berdiri, Apakah Pancasila Tetap Ada?, <https://nasional.kompas.com/read/2017/06/12/07462921/jika.khilafah.berdiri.apakah.pancasila.tetap.ada>.
- [2] Badan Pusat Statistik, Mengulik Data Suku Di Indonesia, <https://www.bps.go.id/news/2015/11/18/127/mengulik-data-suku-di-indonesia.html>.
- [3] Mirhan AM, Refleksi Penciptaan Manusia Berbangsa-Bangsa Dan Bersuku-Suku (Telaah Surah Al-Hujurat Ayat 13), *Jurnal Studia Insania*, Vol. 3 No. 1, ISSN 2088-6306, April 2015, p. 2.
- [4] Ayatalquran.net, Surah Al Hujurat ayat 13, <https://ayatalquran.net/2015/01/surah-al-hujuraat-the-inner-apartments-terjemah-bahasa-inggris/>.
- [5] Wikipedia, *Agama Menurut Jumlah Penganut*, https://id.wikipedia.org/wiki/Agama_menurut_jumlah_penganut.
- [6] Wikipedia, *Agama di Indonesia*, https://id.wikipedia.org/wiki/Agama_di_Indonesia.
- [7] Dahlan Iskan, Semoga Saya Tidak 100 Persen Laki-Laki, *Harian Umum Bandung Ekspres*, 7 April 2015, p. 1.
- [8] Ahmad Khadafi, *Saat Islam Menjadi Agama Mayoritas di Dunia*, <https://tirtoid.com/saat-islam-menjadi-agama-mayoritas-di-dunia-cmdV>.
- [9] Nurjamil, *Jadi Mayoritas Terbesar Kedua di Eropa Timur, Begini Perkembangan Islam Rusia*, <https://www.gomuslim.co.id/read/khazanah/2018/03/31/7511/-p-jadi-mayoritas-terbesar-kedua-di-eropa-timur-begini-perkembangan-islam-rusia-p-html>.
- [10] Hans Kelsen, Penerjemah: Raisul Muttaqien, *Teori Umum Tentang Hukum Dan Negara*, Nusamedia, Bandung, p. 261, 2013.
- [11] Pur Wanisyah, *Manusia Makhhluk Sosial*, <https://www.kompasiana.com/purica/59a6d93566feb003fa05d902/manusia-makhhluk-sosial>.
- [12] L.J. van Apeldoorn, Diterjemahkan oleh: Oetarid Sadino, *Pengantar Ilmu Hukum*, Pradnya Paramita, Jakarta, p. 293, 2011.
- [13] Dedi Ismatullah dan Beni Ahmad Saebani, *Hukum Tata Negara refleksi Kehidupan Ketatanegaraan Di Negara Republik Indonesia*, Pustaka Setia, Bandung, p. 107, 2009.
- [14] Ali Anwar Yusuf, *Wawasan Islam*, Pustaka Setia, Bandung, p. 107, 2002.
- [15] Masdar Farid Mas'udi, *Syarah UUD 1945 Perspektif Islam Edisi Baru*, Alvabet, Tangerang, pp. 78-79, 2013.
- [16] Zainal Abidin Ahmad, *Piagam Madinah Konstitusi Tertulis Pertama di Dunia*, Pustaka Al-Kautsar, Jakarta, p. 26, 2014.
- [17] Ija Suntana, *Pemikiran Ketatanegaraan Islam*, Pustaka Setia, Bandung, p. 86, 2010.
- [18] Ibid.
- [19] Op.cit, p. 85.
- [20] The 1945 Constitution of The Republik Indonesia, Article 1 section (3).
- [21] Masdar Farid Mas'udi, *Syarah UUD 1945 Perspektif Islam Edisi Baru*, Alvabet, Tangerang, p. VII-IX, 2013.
- [22] Ibid.
- [23] Marzuki Wahid, *Fiqh Indonesia Kompilasi Hukum Islam dan Counter Legal Draft Kompilasi Hukum Islam dalam Bingkai Politik Hukum Indonesia*, Marja, Cirebon, p. xii-xiii, 2014.
- [24] KBBi Daring, Lembaga, <https://kbbi.kemdikbud.go.id/entri/lembaga>.
- [25] KBBi Daring, Peradilan, <https://kbbi.kemdikbud.go.id/entri/peradilan>.
- [26] Ismail Ramadan, *Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Penegakkan Keadilan Bagi Terwujudnya Perdamaian*, *Jurnal Rechts Vinding* Volume 6, Nomor 1, April 2017, pp. 74-75.
- [27] Maesa Plangiten, *Fungsi Dan Wewenang Lembaga Praperadilan Dalam Sistem Peradilan Di Indonesia*, *Jurnal Lex Crimen* Vol. II/No. 6/Oktober/2013, p. 30.
- [28] Article 24 section (1) & (2) of the 1945 Indonesian Constitution. see also Article 10 laws of the Republik Indonesia No. 48 year 2009 concerning *Kekuasaan Kehakiman*.
- [29] Sufiarina dan Yusrizal, *Mahkamah Syar'iyah & Pengadilan Agama dalam Sistem Peradilan Indonesia*, Bandung, Refika Aditama, p. 35-36, 2015.

- [30] Jimly Asshiddiqie, Pengadilan Khusus, http://www.jimly.com/makalah/namafile/126/PENGADILAN_KHUSUS_02.pdf.
- [31] Laws of Republik Indonesia No. 14 year 2002 concerning Pengadilan Pajak, Article 2.
- [32] Op.cit., Article 3.
- [33] Op.cit., Article 5 section (1).
- [34] Op.cit., Article 5 section (2).
- [35] Op.cit., Article 31 section (1).
- [36] Op.cit., Article 32 section (1).
- [37] Op.cit., Article 31 section (2).
- [38] Op.cit., Article 33 section (1).
- [39] OP.cit., Article 60 section (1).
- [40] OP.cit., Article 77 section (1).
- [41] Op.cit., Article 77 section (3).
- [42] Hizbut Tahrir, Penerjemah: Yahya A.R., Struktur Negara Khilafah (Pemerintahan & Administrasi), HTI Press, Jakarta, p. 176, 2015.
- [43] Ibid.
- [44] Ibid..
- [45] Alquran-Indonesia.com, <http://www.alquran-indonesia.com/web/quran/listings/details/5/40>.
- [46] Alquran-Indonesia.com, <http://www.alquran-indonesia.com/web/quran/listings/details/24/40>.
- [47] Ayatalquran.net, Surah An Nuur, <https://ayatalquran.net/2015/01/surah-an-nuur-the-light-terjemah-bahasa-indonesia/>.
- [48] Al-wa'ie, Mekanisme Pembuktian Dalam Peradilan Islam, <http://hizbut-tahrir.or.id/2010/01/01/mekanisme-pembuktian-dalam-peradilan-islam/>.
- [49] Hizbut Tahrir, Penerjemah: Yahya A. R., 2015, *Struktur Negara Khilafah (Pemerintahan & Administrasi)*, Jakarta, HTI Press, hlm. 176.
- [50] Op.cit., hlm. 178.
- [51] Ibid. Lihat juga, Cyber Dakwah, Waspada, Penjual Nakal Beras Sintetis!, <http://cyberdakwah.com/2015/05/waspada-penjual-nakal-beras-sintetis/>.
- [52] Hizbut Tahrir, Penerjemah: Yahya A. R., *Struktur Negara Khilafah (Pemerintahan & Administrasi)*, Jakarta, HTI Press, p. 176, 2015.
- [53] Alquran-Indonesia.com, <http://www.alquran-indonesia.com/web/quran/listings/details/4/50>.
- [54] Ayatalquran.net, Surah An Nisaa, <https://ayatalquran.net/2015/01/surah-an-nisaa-the-women-terjemah-bahasa-inggris/>.
- [55] Hizbut Tahrir, Penerjemah: Yahya A. R., Struktur Negara Khilafah (Pemerintahan & Administrasi), Jakarta, HTI Press, p. 179, 2015.
- [56] Op.cit., p. 180.
- [57] KBBI Daring, Muamalah, <https://kbbi.kemdikbud.go.id/entri/muamalah>.
- [58] HukumOnline.com, Sebelas Istilah Qanun Jinayah yang Layak Anda Tahu, <https://www.hukumonline.com/berita/baca/lt54df17d68f824/sebelas-istilah-qanun-jinayah-yang-layak-anda-tahu>.
- [59] Hizbut Tahrir, Penerjemah: Yahya A. R., 2015, Struktur Negara Khilafah (Pemerintahan & Administrasi), Jakarta, HTI Press, hlm. 180.
- [60] Ibid.
- [61] Ibid.
- [62] Ibid.
- [63] Imam al-Mawardi, Penerjemah: Khalifurrahman Fath & Fathurrahman, Ahkam Sulthaniyah Sistem Pemerintahan Khilafah Islam, Qisthi Press, Jakarta, 2015, hal. 133.
- [64] Wikipedia, Hudud, <https://id.wikipedia.org/wiki/Hudud>.
- [65] Imam al-Mawardi, Penerjemah: Khalifurrahman Fath & Fathurrahman, Ahkam Sulthaniyah Sistem Pemerintahan Khilafah Islam, Qisthi Press, Jakarta, p. 138, 2015.
- [66] Op.cit, hlm. 136.