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Jurnal Pemikiran Hukum Islam

WEBINAR NASIONAL

Penelitian Hukum Islam Kontemporer: Isu, Bidang Kajian, dan Pendekatan

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dan pendekatan hukum Islam
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Narasumber



Mohamad Abdun Nasir, Ph. D
"Hukum Islam dan *Legal Pluralism*"
(UIN Mataram, Alumni Emory University, US)



Muhammad Siddiq Armia, Ph. D
"Islamic Constitutionalism dan Pendekatan Multidisiplin"
(UIN Ar-Raniry, Alumni Anglia Ruskin University, UK)



Ahmad Rofii
"Hukum Islam dan *Doctrinal Research*"
(IAIN Syekh Nurjati Cirebon, Ph.D. Cand. Monash University, AU)



Alfitri, Ph. D
"Hukum Islam dan *Empirical Legal Research*"
(IAIN Samarinda, Alumni University of Washington, US)

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ISLAMIC CONSTITUTIONALISM DAN PENDEKATAN MULTI-DISIPLIN

OLEH:

MUHAMMAD SIDDIQ ARMIA, PH.D

UNIVERSITAS ISLAM NEGERI AR-RANIRY

ALUMNI ANGLIA RUSKIN UNIVERSITY, CAMBRIDGE, UNITED KINGDOM

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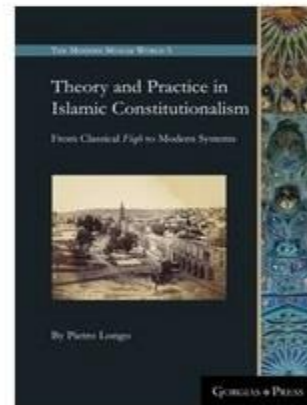
Penelitian Hukum Islam Kontemporer: Isu, Bidang Kajian, dan Pendekatan

Diselenggarakan oleh IAIN Samarinda, Kamis, 11 Juni 2020.

1. Mengapa Harus Kajian Islamic Constitutionalism (IC)...

- Kajian IC sering dipakai untuk menjembatani topik tentang hak-hak warganegara, khususnya dalam konteks Islam sebagai agama mayoritas di suatu negara;
- Kajian IC dirasa lebih kompetible dalam konteks negara bangsa (state nation), dengan negara yang menerapkan rule of law (taqnin) sebagai alat rekayasa sosial dan kesejahteraan (*tool of social engineering and welfare*);
- Kajian IC bisa menjawab kebutuhan zaman, karena mempunyai metodologi untuk menyelesaikan masalah baru.

1.Kajian-kajian IC...(2)



Pietro Longo

Theory and Practice in Islamic Constitutionalism

From Classical Fiqh to Modern Systems

Gorgias Press | 2019

DOI: <https://doi.org/10.31826/9781463239640>

1.Kajian-kajian IC.... (3)

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Islamic Constitutionalism Before Sovereignty: Two Defenses of the Tunisian Constitution of 1861

Andrew March

Keywords

Abstract

The 19th-century witnessed the first efforts to draw up constitutions in traditional Muslim monarchies. Far from emerging out of popular pressure, never mind revolution, these documents were largely motivated by the desire of rulers and their chief advisors to rationalize state legal and bureaucratic authority, in order to both strengthen central state control internally and also deal with increasing European pressure, particularly in fiscal and economic matters. Nonetheless these texts reflect a language of authority and legitimacy that is to a large extent a reflection of traditional Islamic constitutional theory, before the rise of popular, mass politics and the associated ideological transformation of Islamic political thought. This article focuses instead on the Tunisian constitutional moment of 1857-1861. I focus on two important sources for the study of the emergence of modern Islamic political-constitutional thought and the problem of sovereignty. The first set are the first

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1.Kajian-kajian IC...(4)

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2 Free Markets of *Fiqh*

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Middle Eastern Studies

Society and Culture

Islamic Constitutionalism

Khan L. Ali

M. Ramadan Hisham

DOI:10.3366/edinburgh/9780748641284.003.0004

This chapter focuses on Islamic constitutionalism, which is an integral part of contemporary *ijtihad*. As its defining attribute, an Islamic constitution submits to supremacy of the Basic Code, the Qur'an and the Prophet's Sunnah. Historically, constitutionalism has not been critical to the advancement of Islamic law. For centuries, Islamic law has developed without the notion of constitutionalism, and classical *fiqh* markets knew no constitution, nor was their vibrancy dependent on one. The absence of an Islamic written constitution is attributed to the presence of Basic Code, which served Muslim empires and communities as a written constitution. However, legal systems without written constitutions may gradually develop constitutional conventions that may provide political and normative stability. In the nineteenth-century Ottoman Empire, Islamic constitutionalism began to emerge through the Ottoman Constitution of 1876. Under the combined pressure of domestic unrest and the dominance of European colonial powers, this Constitution was established to infuse rudimentary elements of democracy in a dying empire that the Ottoman sultans had ruled for nearly four centuries. However, it was abandoned in favour of another constitution that would establish a secular Turkish state. While the 1876 Ottoman Constitution faltered, a new wave of constitutionalism rose to prominence in the twentieth century after a number of Muslim nations obtained independence from Western colonialism. Cognisant with the trend of written constitutionalism throughout the world, almost all Muslim nations of diverse cultures, political persuasions, historical experience and ethnic compositions have accepted

1.Kajian-kajian IC

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Implementing Islamic Constitutionalism: How Islamic Is Indonesia Constitution?

 <https://doi.org/10.24042/adalah.v15i2.3389>

Muhammad Siddiq Armia

Abstract

Religious constitutionalism has recently become a global discussion. Such a trend arises as a result of several countries that have a majority of religious adherents declare their constitution based on certain religions. Thailand, for example, provides special norms about Buddhism (Buddhist constitutionalism), the Vatican has special norms about Catholicism (Catholic constitutionalism), India has special norms about Hinduism (Hindu constitutionalism), Saudi Arabia has norms specifically about Islam (Islamic constitutionalism), and so on. This article analyzes whether or not the Islamic principles have been adopted in the Indonesian Constitution. These principles consist of protecting religion, soul, mind, offering

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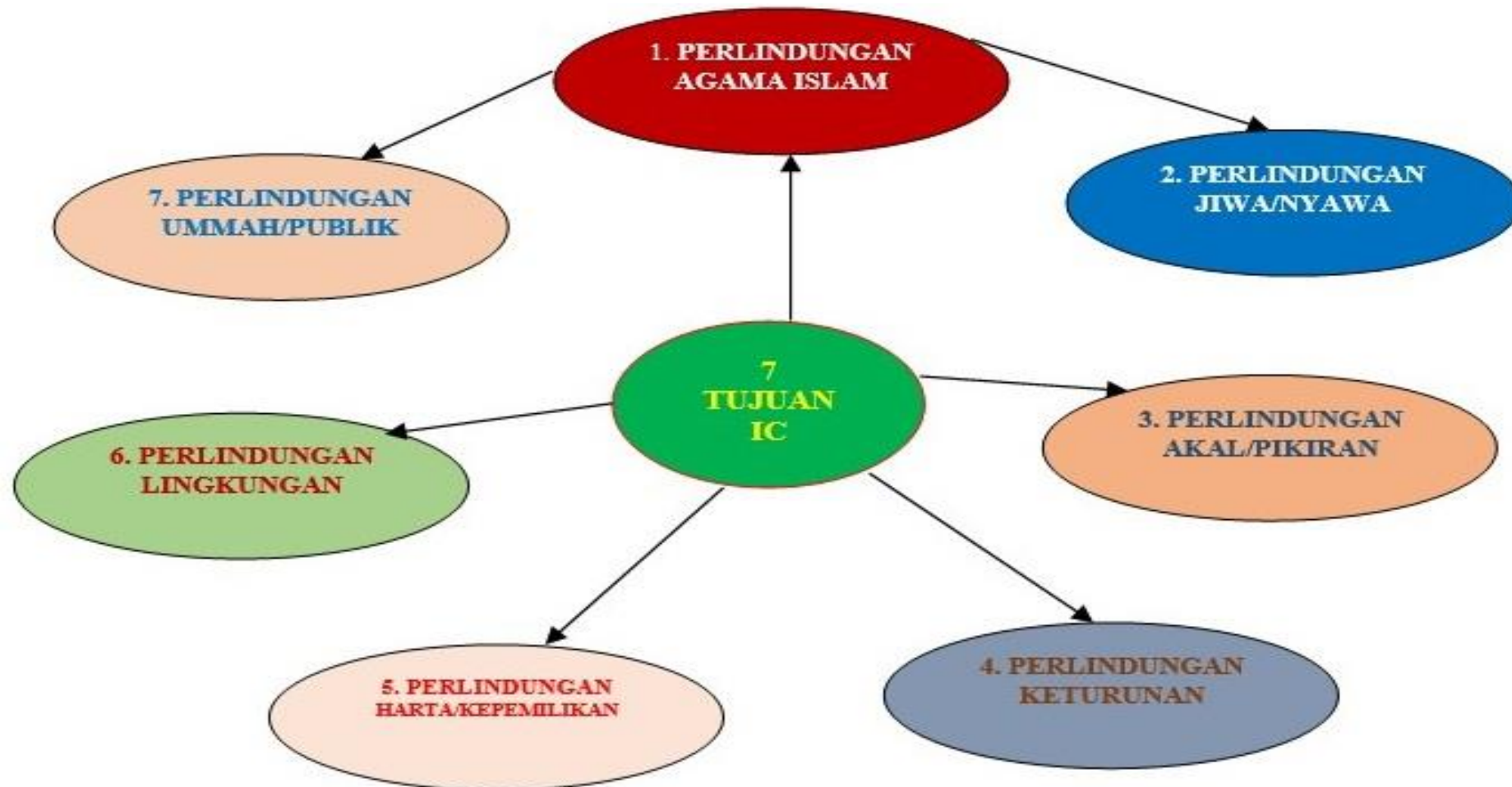
Khan L.Ali (University of Edinburgh)

Islamic Constitutionalism = Konstitusi yang tunduk pada supremasi kode dasar dalam Al-Qur'an dan Hadis. Pendefinisian Khan L.Ali bersifat umum, sehingga terkendala pada saat menemukan ayat atau hadis yang tidak sesuai konteks perubahan zaman.

M.S.Armia (UIN Ar-Raniry)

Islamic Constitutionalism= Al-Quran & Hadis sebagai sumber utama, dengan menjadikan maqashid sab'ah sebagai dasar pertimbangan, dalam menjalankan prinsip konstitusi bernegara. Norma Dasar (GrandNorm) dalam konstitusi mempunyai koneksitas langsung dan tidak langsung dengan maqashid sab'ah tersebut, koneksitas langsung lebih utama.

3. Kajian Inti IC



3. Kajian Inti IC...(2)

Meliputi Tujuh Tujuan Utama Yang Bisa Diadopsi oleh Konstitusi Negara:

1. Mempunyai Unsur Perlindungan Agama Islam
2. Mempunyai Unsur Perlindungan Melindungi Jiwa/nyawa,
3. Mempunyai Unsur Perlindungan Akal/pikiran,
4. Mempunyai Unsur Perlindungan Keturunan,
5. Mempunyai Unsur Perlindungan Harta/kepemilikan,
6. Mempunyai Unsur Perlindungan Lingkungan,
7. Mempunyai Unsur Perlindungan Ummah/umum.

3. Kajian Inti IC... contoh..(3)

1. Perlindungan Agama

Terdapat norma khusus dalam konstitusi yang menyatakan perlindungan agama seperti Pasal 29:

Negara menjamin kemerdekaan tiap-tiap penduduk untuk memeluk agamanya masing-masing dan untuk beribadah menurut agamanya dan kepercayaannya itu

4.IC Sebagai Pendekatan Multidisiplin

1. Pada dasarnya semua kajian keilmuan bisa memakai IC sebagai fondasi dasar (*bedrock*), karena mempunyai persamaan pada epistemology keilmuan, serta mempunyai nilai-nilai unversalitas. Pembuktian DNA sbg bukti halal, Nasab, kewarisan, Peradilan.
2. Penerapannya kompatible untuk-untuk negara-negara berpenduduk mayoritas Islam, Seperti; Pembatasan Mesjid/Haji, untuk perlindungan jiwa/nyawa dan Ummah dari Covid 19;
3. Bisa juga juga diterapkan dalam negara-negara berpenduduk minoritas Islam, karena sifat IC adalah rahmatan lil alamin. Seperti; Pembatasan ke Rumah Ibadah, untuk perlindungan jiwa/nyawa dan Ummah dari Covid 19;
4. Dan lain-lain;

Biografi:

Muhammad Siddiq Armia, Ph.D

S3: Anglia Ruskin University, UK. Comparative Constitutional Studies, Supreme Court of United Kingdom & Germany Constitutional Court (2016)

S2: Fakultas Hukum, Universitas Indonesia, 2000

S1: Fakultas Syariah, IAIN Ar-Raniry, 2000

Latest Publications:

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- Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience. Indexed by Scopus. 2018

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1. Muhammad Siddiq Armia, Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience, *Intellectual Discourse*, 26(2), 2018, pp.903–930
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